

United States  
Court of Appeals  
for the Ninth Circuit

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HARTFORD FIRE INSURANCE COMPANY, a  
corporation,

Appellant,

vs.

ESLI H. DANIELS and HELEN J. DANIELS,  
Appellees.

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Transcript of Record

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Appeal from the United States District Court for the Southern  
District of California, Central Division

FILED

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FEB - 6 1952

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

PAUL P. O'BRIEN



United States  
Court of Appeals  
for the Ninth Circuit

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District of California, Central Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

HINDMAN & DAVIS,  
510 Financial Center Bldg.,  
704 S. Spring St.,  
Los Angeles 14, Calif.

For Appellees:

ARCH E. EKDALE,  
JOHN F. McCARTHY,  
1104 Security Bldg.,  
Long Beach 2, Calif. [1\*]

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\* Page numbering appearing at foot of page of original certified Transcript of Record.



In the United States District Court, Southern  
District of California, Central Division

No. 12,506-BH

ESLI H. DANIELS and HELEN J. DANIELS,  
Plaintiffs,

vs.

HARTFORD FIRE INSURANCE COMPANY,  
a corporation,  
Defendant.

### PETITION FOR REMOVAL

To the above entitled Court and to the Judge or  
Judges thereof:

The Petition of Defendant Hartford Fire Insurance Company, a Corporation, respectfully shows:

#### I.

That the Defendant Hartford Fire Insurance Company is now and at all times herein mentioned has been a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in Hartford in said State, and is now and was at the time of the commencement of the foregoing entitled action, and at all times in the Plaintiffs' complaint and in this action mentioned a citizen and resident of the State of Connecticut, and a non-resident of the State of California.

#### II.

That the Plaintiffs Esli H. Daniels and Helen J.

Daniels [2] are now, and were at the time of the commencement of the foregoing entitled action, and at all times in the Plaintiffs' complaint and this petition mentioned, citizens and residents of the State of California.

### III.

That the above entitled cause is a suit of a civil nature over which the United States District Court has original jurisdiction, and in which is involved a controversy wholly between citizens of different states, to wit, between the Plaintiffs, citizens and residents of the State of California, and the Defendant, Hartford Fire Insurance Company, a corporation, a citizen and resident of the State of Connecticut.

### IV.

That the amount in controversy between Plaintiffs and the petitioning Defendant exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3,000.00), and is an action by Plaintiffs against this petitioning Defendant to recover on an alleged contract of insurance the sum of Fourteen Thousand Four Hundred Fifty Dollars (\$14,450.00), together with costs from this petitioning Defendant.

### V.

That this Defendant disputes said demand of the Plaintiffs and will appear, answer and defend against the same.

## VI.

That the foregoing entitled cause was commenced in the Superior Court of the State of California in and for the County of Los Angeles on the 9th day of October, 1950, by the Plaintiffs filing with the Clerk of said Court a complaint in said action and causing summons to be issued directed to this petitioning Defendant; that this petitioning Defendant received a copy of the initial proceedings herein set forth on the 16th day of October, 1950, by service upon it at San Francisco, California, of a copy [3] of the Plaintiffs' Complaint and Summons filed in and issued by the aforesaid Superior Court of the State of California, in and for the County of Los Angeles.

## VII.

That your Petitioner accompanies this Petition and files herewith a bond with good and sufficient surety conditioned that Defendant will pay all costs and disbursements incurred by reason of the removal proceedings, should it be determined that the case was not removable or was improperly removed, and also files herewith a copy of all processes and pleadings served upon it in such action.

## VIII.

That the petitioning Defendant desires that said cause be removed from the Superior Court of the State of California, in and for the County of Los Angeles, to the United States District Court, Southern District of California, Central Division, and

prays that said Bond be accepted and that said cause be so removed.

HARTFORD FIRE INSURANCE  
COMPANY

/s/ By E. EUGENE DAVIS,  
Its Attorney.

Duly Verified.

[Endorsed]: Filed Nov. 3, 1950. [4]

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In the Superior Court of the State of California in  
and for the County of Los Angeles

No. LBC—61,920

ESLI H. DANIELS and HELEN J. DANIELS,  
Plaintiffs,

vs.

HARTFORD FIRE INSURANCE COMPANY,  
a corporation,  
Defendant.

COMPLAINT

(On Insurance Policy)

Plaintiffs complain of defendant and for cause  
of action allege:

I.

At all times herein mentioned defendant Hartford Fire Insurance Company was and now is a corporation and was and now is duly licensed and authorized to do an insurance business in the State of California.

## II.

At all times herein mentioned plaintiffs were and now are husband and wife.

## III.

At all times herein mentioned plaintiffs, as joint tenants, owned a certain frame building situated at 3003 Palos Verdes Drive, East, Palos Verdes, California, the same being located upon Lot H, [9] Rancho Los Palos Verdes, Los Angeles County, California.

## IV.

On or about December 1, 1948 defendant issued to plaintiffs, upon said building, a written policy of insurance, a copy of which is attached hereto marked "Exhibit A", and in consideration thereof plaintiffs paid defendant a premium in the sum of \$120.00, as set forth in said policy.

## V.

On or about March 9, 1949 defendant, by endorsement of said policy of insurance, effective as of March 4, 1949, increased the amount of insurance on said building under said policy from the sum of \$10,000.00 to the sum of \$15,000.00 and issued its written endorsement of said policy, a copy of which is attached hereto marked "Exhibit B", and in consideration of the issuance thereof and the increase in the amount of said insurance plaintiffs paid defendant an additional premium in the sum of \$54.90, as set forth in said endorsement.



## VI.

Said policy of insurance was issued for the term of three years beginning on December 1, 1948 and ending on December 1, 1951, and at all times herein mentioned said policy of insurance was and is now in full force and effect, and at all times since March 4, 1949 said endorsement of said policy of insurance, was and now is in full force and effect.

## VII.

On or about December 19, 1949 plaintiffs suffered direct loss to said property so insured by said policy of insurance caused by perils insured by said policy of insurance. Said direct loss was caused by explosion occurring in said building so insured and from hazards inherent therein, and resulted in the rupture or bursting of a water pipe which was a part of the insured building and caused the reinforced concrete slab forming a part of said [10] building to be deformed and cracked and caused the door and window frames, floors and plaster of said building to be cracked, deformed and damaged and by reason thereof said property so insured by said policy of insurance, and plaintiffs were damaged in the sum of \$14,450.00. Said loss and damage was not caused by explosion originating within steam boilers, steam pipes, steam turbines, steam engines or fly wheels and was not caused by explosion, rupture or bursting of steam boilers, steam pipes, steam turbines, steam engines or fly wheels.



## VIII.

Plaintiffs are informed and believe and on that ground allege that at all times herein mentioned Hamman & Avery, a partnership, was and now is the duly authorized agent of defendant in connection with all matters pertaining to said policy of insurance.

## IX.

On or about December 21, 1949 plaintiffs notified defendant of said loss by reporting the same to said Hamman & Avery, as agent of defendant, and at said time plaintiffs inquired of said agent as to whether or not any action was required of plaintiffs under said policy of insurance. Said Hamman & Avery, acting as agent for defendant, at said time, informed plaintiffs that said loss was not covered by said insurance policy and that defendant was not obligated, under the terms of said policy of insurance, to indemnify plaintiffs for said loss or any part thereof. Plaintiffs believed and relied upon said statement of said Hamman & Avery and believing and relying thereon, plaintiffs refrained from filing Proof of Loss under said policy of insurance or taking any further action thereon until after the expiration of more than sixty days after December 19, 1949. Plaintiffs did not discover that said loss was covered by said policy of insurance until after the expiration of more than sixty days after said loss. [11]

## X.

On July 31, 1950 plaintiffs rendered to defendant, at its main office in California, written Proof of

Loss, a copy of which is attached hereto, marked "Exhibit C".

### XI.

On or about August 8, 1950 defendant served a notice in writing upon plaintiffs, a copy of which is attached hereto, marked "Exhibit D".

### XII.

Plaintiffs have performed all of the terms, covenants and conditions of said insurance policy as so endorsed on the part of plaintiffs to be performed.

### XIII.

Defendant has failed, neglected and refused to pay plaintiffs said sum of \$14,450.00 or any part thereof and there is now due, owing and wholly unpaid from defendant unto plaintiffs the sum of \$14,450.00.

Wherefore plaintiffs pray judgment against defendant in the sum of \$14,450.00, for their costs herein incurred and for such other and further relief as may be just.

ARCH E. EKDALE and  
JOHN F. McCARTHY,  
By JOHN F. McCARTHY,  
Attorneys for Plaintiffs. [12]

State of California,  
County of Los Angeles—ss.

Esli H. Daniels being first duly sworn, says that he is one of the plaintiffs in the above entitled action; that he has read the foregoing Complaint, and

knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters that he believes it to be true.

ESLI H. DANIELS

Subscribed and sworn to before me this 9th day of October, 1950.

JOHN F. McCARTHY,

Notary Public in and for said County and State.



NO OTHER INSURANCE PERMITTED EXCEPT BY AGREEMENT ENDORSED HEREON OR ADDED HERETO (See Clause "Permission Granted")

A CAPITAL STOCK COMPANY

# HARTFORD FIRE INSURANCE COMPANY



INCORPORATED 1849 CHARTER REPEALED

CONNECTICUT

MAIN OFFICE IN CALIFORNIA, HARTFORD BLDG., SAN FRANCISCO

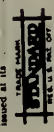
FIRE AMOUNT, \$	10,000.00	RATE	1.00	PREMIUM \$	100.00
EXTENDED COVERAGE*		RATE	.15	PREMIUM \$	15.00
		RATE	.05	PREMIUM \$	5.00
V & X.M. END.				TOTAL PREMIUM \$ 120.00	

NO INSURANCE ATTACHES IN CONNECTION WITH EXTENDED COVERAGE PERILS UNLESS "RATE" AND "PREMIUM" IS SPECIFIED ABOVE

In Consideration of the Stipulations Herein Named and of

- include direct loss to the described property from "Terrorism" as defined in the attached schedule.
- THE TERM "VANDALISM AND MALICIOUS DAMAGE" AS USED HEREIN IS RESTRICTED TO AND INCLUDES ONLY WILLFUL OR MALICIOUS PHYSICAL INJURY TO OR DESTRUCTION OF THE DESCRIBED PROPERTY.
- WHEN THIS ENDORSEMENT IS ATTACHED TO A POLICY COVERING DIRECT LOSS TO THE DESCRIBED PROPERTY, THIS COMPANY SHALL BE LIABLE UNDER THIS ENDORSEMENT FOR ANY LOSS
- TO GLASS (OTHER THAN GLASS BUILDING BLOCKS) CONSTITUTING A PART OF THE BUILDING;
- FROM PILFERAGE, THEFT, BURGLARY OR LARCENY;
- FROM EXPLOSION ORIGINATING WITHIN STEAM BOILERS, STEAM PIPES, STEAM TURBINES, STEAM ENGINES, FLY WHEELS, LOCATED IN THE BUILDING INSURED OR IN BUILDING(S) CONTAINING THE PROPERTY INSURED;
- FROM DESTRUCTION, DELAY, DETERIORATION, CHANGE IN TEMPERATURE OR HUMIDITY, LOSS OF MARKET, NOR FROM ANY OTHER CONSEQUENTIAL OR INDIRECT LOSS OF ANY KIND;
- CAUSED, DIRECTLY OR INDIRECTLY, BY: ENEMY ATTACK OR AN IMMEDIATELY IMPENDING ENEMY ATTACK; MILITARY, NAVAL OR AIR FORCES; REBELLION, REVOLUTION; CIVIL WAR; USURPED POWER;
- INVASION; INSURRECTION; REBELLION;
- WHEN THIS ENDORSEMENT IS ATTACHED TO A POLICY COVERING BUSINESS INTERRUPTION (USE AND OCCUPANCY), EXTRA EXPENSES, LOSS OF PROFITS AND COMMISSIONS, THIS COMPANY SHALL NOT BE LIABLE UNDER THIS ENDORSEMENT FOR ANY LOSS DUE TO DAMAGE TO THE DESCRIBED PROPERTY WHEN SUCH DAMAGE RESULTS FROM ANY OF THE CAUSES LISTED IN SUBDIVISIONS (B), (C), (D) OR (E) OF PARAGRAPH NO. 1 OF THE POLICY.
- THE PERMITTED PERIOD OF VACANCY AS PROVIDED BY SAID POLICY SHALL APPLY TO LIABILITY UNDER THIS ENDORSEMENT EXCEPT WHEN SUCH PERMITTED PERIOD OF VACANCY IS SPECIFICALLY EXCLUDED BY THE POLICY.
- SHALL NOT BE LIABLE FOR LOSS UNDER THIS ENDORSEMENT OCCURRING WHILE THE DESCRIBED BUILDING IS VACANT BEYOND A PERIOD OF THIRTY DAYS, WHETHER OR NOT SUCH PERIOD COMMENCED PRIOR TO THE INCEPTION DATE OF THIS ENDORSEMENT.

Attached to and forming part of Policy No. **515285**  
of the **Hartford Fire Insurance Company**  
Name of Insurance Company  
**Long Beach, California** Dated **December 1, 1948**  
Agency



MADE IN U.S.A. JULY 1944

*Hamman*  
HAMMAN & AVEY

Agent





















## 44

## SCHEDULE "A" — POLY ET

Dated **December 1, 1948**

Dated **December 1, 1948**

Shingle roof frame building.

114

on

474

(10)

## Summary

Loss, if any, payable to

Loss, if any, payable to

SCHEDULE "B"  
STATEMENT OF CASH VALUE AND LOSS AND DAMAGE

The damage consists principally of deformation of the reinforced concrete slab forming a part of the dwelling with accompanying cracking of the concrete, deformation of door and window frames, swelling and heaving of hard wood floors, plaster cracks and related damage. Necessary repairs will include removal of hardwood floors, base trim, cabinet work, door and window trim, removal of reinforced concrete slab floor in affected rooms and the replacement of all thereof with appurtenant heating coils, hardwood and other floors. The reasonable and necessary cost of performing such work is the sum of \$14,450.00. Reference is made to a report of Perlitte & Soring, Consulting Engineers, dated April 2<sup>nd</sup>, 1950, a copy of which has been submitted to Hartford Fire Insurance Company.

Notice of said loss was given to an agent of Hartford Fire Insurance Company on or about December 21, 1949. Said agent then informed the assured that said loss was not covered by said policy. My reason there- of, the assured refrained from filing proof of loss. On May 2, 1950 said report of Parlier & Corbin was submitted to the General Adjustment Bureau, Inc. for the account of Hartford Fire Insurance Company and be- tween that date and on or about July 10, 1950, said damage was fully inspected and said claim was investigated by Hartford Fire Insurance Company. The assured was not notified until after July 10, 1950 of the conclusion of said investigation or the action taken thereon by said Company.

## Value No.

Name of Company

Name of Company

one

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15,000.00

Expires

515285  
Agency at

12/1/48

## PROOF OF LOSS

Long Beach, California

To the

Hartford Fire Insurance Company

of Hartford, Connecticut

By the above indicated policy of insurance you insured

Eslie H. Daniels and Helen J. Daniels

against loss by "fire"; Extended coverage upon the property described under Schedule "A," according to the terms and conditions of the said policy and all forms, endorsements, transfers and assignments attached thereto.

1. Time and Origin: A loss occurred about the hour of o'clock M., on the 19th day of December, 1948. The cause and origin of the said loss were, according to the knowledge and belief of the assured, the loss resulted from explosion occurring in the insured property, caused by the unintentional entry of steam in a soldered water pipe resulting in rupture or bursting thereof, causing the damage described in Schedule B.

2. Occupancy: The building described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:  
Dwelling

3. Title and Interest: When this policy was acquired and at the time of the loss the interest of your insured in the property described therein was sole and unconditional ownership, and no other person or persons had any interest therein or incumbrance therein. (State exceptions, if any.)

## No exceptions

4. Changes: Since the said policy was acquired there has been no assignment thereof, or change of ownership, use, occupancy, possession, location or exposure of the property described, or of your insured's interest therein. (State exceptions, if any.)

## No exceptions

5. Total Insurance: The total amount of insurance upon the property described by this policy was, at the time of the loss, \$ 15,000.00, as more particularly specified in the apportionment attached under Schedule "C," besides which there was no policy or other contract of insurance, written or oral, valid or invalid.

6. The Cash Value of said property at the time of the loss was - - - at least - - \$ 50,000.00

7. The Whole Loss and Damage as stated under Schedule "B" was - - - - - \$ 14,450.00

8. The Amount Claimed under the above numbered policy is - - - - - \$ 14,450.00

The said loss did not originate by any act, design, or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy or render it void; no articles are mentioned herein or in annexed schedules but such as were in the building damaged or destroyed, and belonging to, and in possession of the said insured at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

State of California

County of Los Angeles

Severally

Subscribed and sworn to before me this 14 day of July, 1950

NOTARY PUBLIC  
FEBRUARY 1947

EXHIBIT C

(seal)

Eslie H. Daniels Insured  
Helen J. Daniels Insured

JOHN F. MCARTHY  
NOTARY PUBLIC

My Comm. Exp. 12-31-52 State of California Notary Public











EXHIBIT "D"

[Letterhead of Hindman & Davis]

Copy

August 8, 1950

Esli H. Daniels and Helen J. Daniels  
c/o John F. McCarth, Attorney at Law  
Security Bldg., Long Beach, California.

Re: Hartford Fire Insurance Company  
Policy No. 515285

Dear Sir and Madam:

Document entitled "Sworn Statement in Proof of Loss" signed and sworn to by each of you and making claim against Hartford Fire Insurance Company in the amount of \$14,450.00 for loss alleged therein to have occurred on December 19, 1949, to certain of the property described in the above numbered policy was received by the Hartford Fire Insurance Company at its San Francisco office on July 31, 1950.

You Are Hereby Notified that Hartford Fire Insurance Company objects to said Sworn Statement in Proof of Loss specifically upon the ground of delay in presenting the same to it, and delay in notifying it of said claim for loss, said alleged loss, according to your sworn statement, having occurred on December 19, 1949, and no notice thereof having been given to said company until April 19, 1950, and no Proof of Loss having been received by it until receipt of the above-referred to document.

You Are Further Notified that the Hartford Fire Insurance Company, complying with the terms and

conditions of the above numbered policy and in protection of its interest thereunder, totally disagrees with the amount of loss claimed by you in said Proof of Loss, and does not admit that you suffered loss on each or any of the different articles or properties set forth in said Proof of Loss.

You Are Further Notified that Hartford Fire Insurance Company denies that any loss by explosion, or by any other peril insured against by the afore-referred to policy of insurance, occurred at the premises described therein on December 19, 1949, or at any other time at all.

By making the foregoing objections and denials, Hartford Fire Insurance Company does not waive, and shall not be deemed to have waived, [21] any of the terms or conditions of the aforereferred to policy of insurance, or of any of its rights therein or thereunder, or in the premises, but all of its rights under said policy and in the premises are hereby specifically reserved.

Yours very truly,

HARTFORD FIRE INSURANCE  
COMPANY

By E. EUGENE DAVIS,  
Its Attorney.

EED:fml

cc: Esli H. Daniels & Helen J. Daniels, 3003 Palos  
Verdes Drive East. [22]

[Endorsed]: Filed Oct. 9, 1950.



[Title of District Court and Cause.]

## BOND ON REMOVAL OF CAUSE

Know All Men by These Presents:

That the undersigned, Hartford Fire Insurance Company, a Corporation, Defendant herein, as Principal, and Hartford Accident and Indemnity Company, a corporation, authorized to and doing business in the State of California, as a surety on bonds of undertaking in said State, as surety, are held and firmly bound unto Esli H. Daniels and Helen J. Daniels, Plaintiffs, in the sum of One Thousand Dollars (\$1,000) lawful money of the United States, to be paid to said Plaintiffs, their successors or assigns, for which payment well and truly to be made, the undersigned bind themselves, their successors and assigns firmly by these presents.

Sealed with our seals and dated this 3rd day of November, 1950.

The condition of the above obligation is such that: [23]

Whereas, said Defendant Hartford Fire Insurance Company, a Corporation, has filed in the United States District Court, Southern District of California, Central Division, its Petition for Removal of the above entitled cause from the Superior Court of the State of California, in and for the County of Los Angeles, to said District Court and has filed therewith all processes, pleadings and orders served upon it in said action in said Superior Court, as provided by law,

Now, Therefore, if said Defendant shall well and

truly pay all costs and disbursements incurred by reason of said removal proceedings, should it be determined that the case was not removable or was improperly removed, then this obligation shall be void; otherwise, it shall be and remain in full force and effect.

HARTFORD FIRE INSURANCE  
COMPANY

/s/ By E. EUGENE DAVIS

Its Attorney

HARTFORD ACCIDENT AND  
INDEMNITY COMPANY

/s/ By J. THORNTON McCARTHY

Attorney-In-Fact

Examined and Recommended for Approval as  
provided in Rule 8.

/s/ By E. EUGENE DAVIS

Attorney at Law

I hereby approve the foregoing.

Dated: November 3, 1950.

EDMUND L. SMITH

Clerk U. S. District Court, South-  
ern District of California

/s/ By G. A. SAUNDERS

State of California,  
County of Los Angeles—ss.

On this 3rd day of November, in the year 1950,  
before me, Eleanor G. Davis, a Notary Public in and  
for said County, residing therein, duly commissioned  
and sworn, personally appeared J. Thornton Mc-

Carthy, known to me to be the Attorney-in-Fact of the Hartford Accident and Indemnity Company, the Corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the Corporation therein named, and he acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]            /s/ ELEANOR G. DAVIS,  
Notary Public in and for the County of Los Angeles, State of California. My Commission Expires May 27, 1951. [24]

[Endorsed]: Filed Nov. 3, 1950.

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[Title of District Court and Cause.]

### ANSWER

Comes Now Defendant, and for answer to Plaintiffs' Complaint:

#### I.

As to the allegations of paragraph VII of said Complaint, Defendant denies said allegations and each and every allegation, matter and thing in said paragraph VII contained, except as to the allegation that Plaintiffs were damaged in the sum of \$14,450.00, and as to said allegations alleges that it is without knowledge or information sufficient to form a belief as to the truth of said allegations.

## II.

As to the allegations of paragraph VIII of said Complaint, Defendant admits that Hamman & Avery, a partnership, was the agent of Defendant authorized to execute and deliver policies of insurance [25] for Defendant, but denies that it was authorized in all or any other matters pertaining to said policy of insurance.

## III.

As to the allegations of paragraph IX of said Complaint, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph IX.

## IV.

As to the allegations of paragraph XII of said Complaint, Defendant denies that Plaintiffs performed all of the terms of said insurance policy, and particularly denies Plaintiffs performed the terms of the insurance policy relating to notice and proof of loss.

## V.

As to the allegations of paragraph XIII of said Complaint, Defendant admits that it has refused to pay Plaintiffs the sum of \$14,450.00, or any part thereof, but denies that there is now or was at the time of the commencement of the foregoing entitled action, or at any other time, or at all, due, owing and unpaid, or due, owing or unpaid from Defendant to Plaintiffs the said sum of \$14,450.00, or any other sum at all.

Wherefore, Defendant prays that Plaintiffs take nothing by their Complaint, and that Defendant go hence and have and recover its costs and disbursements herein.

/s/ E. EUGENE DAVIS  
HINDMAN & DAVIS

/s/ By E. EUGENE DAVIS  
Attorneys for Defendant [26]

Affidavit of Service by Mail attached.

[Endorsed]: Filed Nov. 7, 1950.

---

[Title of District Court and Cause.]

### MEMORANDUM OPINION

Plaintiffs brought this action for a loss which they allege was covered by the extended coverage rider on a fire insurance policy issued by the defendant through its agent.

The amount of the loss is not in dispute.

Two questions of fact are presented to me for decision as follows:

1. Was the loss caused by an explosion within the meaning of the extended coverage rider attached to the insurance policy?

2. Did the insurer waive the requirement of submitting proof of loss within sixty days as provided by the policy?

The facts concerning the explosion feature are somewhat similar to *Olds Seed Co. v. Commercial Union Assurance Co.*, 179 F. 2d 427. The complaint in this action is modeled after the *Olds* case.



The determination of the cause of the breaking of the water pipe in question resulted in a battle of the experts. Naturally, the [28] expert for the plaintiffs held that the break was due to internal pressure, while, as expected, the experts for the defendant claimed the break was caused by external stress based upon varying theories.

There are certain facts that convince me the break in the water pipe was due to an explosion or rupture caused by internal pressure. It is undisputed that the thermostat on the hot water heater was defective and that the hot water was brought to an excessive heat over an extended period of time. It is also apparent that the water pipe involved was subjected to great pressure. The breaking of the pipe, the discovery of the overheating and the opening of the faucets all occurred simultaneously. Was the breaking of the water pipe a mere co-incident? I think not. The water pipe broke at its weakest point. How weak the pipe was and what amount of pressure this particular pipe would withstand no one knows.

After considering the entire evidence I am satisfied the breaking of the pipe was the result of an explosion within the terms of the extended coverage rider to the policy.

The insurance contract contained the usual provision requiring the filing of the proofs of loss within sixty days as a condition precedent to any recovery for loss under the policy. The defendant now relies upon a delay in the filing of such proof of loss as a defense to this action.

The loss occurred on December 19, 1949, and the agent Avery was notified on December 21, 1949. The local office of the defendant in Los Angeles first admits hearing of the loss on April 19, 1950, when Avery requested proof of loss forms be sent to the plaintiffs' attorney. This request stimulated a comprehensive investigation of the loss by the defendant, including the hiring of a consulting engineer. The formal proof of loss was received by the defendant at its head office in San Francisco on July 31, 1950. In a letter dated August 8, 1950, written by the defendant's attorney, the proofs of loss were formally rejected on the ground that the loss did not result from an insured [29] peril, and also on the ground that the proofs of loss were not made within the required sixty day period. It will be noted that the defendant never raised the question of late filing until the proofs of loss had been turned over to its legal department. Up to this time the parties had dealt with each other on the sole question of whether the loss was an insured risk.

The plaintiffs contend that the condition requiring the proofs of loss to be filed within sixty days after loss was waived by the insurer.

The principles of law involved in these opposing contentions are not in dispute. Both parties concede that a delay in the presentation to the insurer of notice and proofs of loss as required by the policy may be waived if the delay is caused by any conduct on the part of the insurer or its authorized agent; that the provision limiting the authority of an agent to waive a condition except by a writing

endorsed on the policy does not apply to stipulations to be performed after loss such as the giving of notice and the furnishing of proofs of loss; that in order to effect a waiver by an insurance company in respect of these conditions, the agent by whom such waiver is effected must be acting within the scope of his actual or apparent authority; that a denial of liability by an insurer, or his authorized officer or agent, made within the period prescribed by the policy for the submission of proofs of loss, and based on the ground that the loss is not within the risks assumed under the contract of insurance constitutes a waiver.

Defendant argues that the agent Avery had no authority to make a denial of liability upon behalf of the defendant in the first place, and that there is no evidence that the agent had sufficient knowledge of the nature of the loss and the basis of the claim upon which to make a denial. Whether a particular agent has the power to waive a condition is a question of fact. (*Westerfield et al. v. New York Life Ins. Co.*, 61 P. 667, 670). The whole course of dealing between the agent and the insured indicates that he was acting within the scope of his apparent [30] authority. The insurer permitted the agent to clothe himself with all the indicia of authority. Avery could solicit business, prepare and accept applications, execute, countersign and deliver policies, and collect premiums. A mere call on the telephone after the loss was suffered enabled Dr. Daniels to increase his coverage on the property. Apparently Avery had the power to renew policies and to make endorse-



ments extending coverage. Manifestly Mr. Avery had authority to consummate contracts of insurance for the defendant. It was a part of his duty to report all losses and claims to the Los Angeles office. The request for proof of loss forms was channeled through him. An insurance company which permits an agent to project himself before the public in this manner will not now be heard to assert that in respect to a denial of liability he was acting outside the scope of his apparent authority.

I find no greater merit in defendant's contention that the agent did not have sufficient information before him upon which to make an intelligent denial of liability. Mr. Avery's position in this litigation is a delicate one, and one would not expect to find in his testimony any direct statement clearly supporting either party's theory of the facts. If there is any doubt as to the extent or exactness of his knowledge of the nature of the loss or the claimed coverage arising from his conversations with Mr. Wing and Dr. Daniels, it is removed by his testimony concerning his informing Dr. Daniels of the similarity between the facts in this case and those in the Olds Seed Co. case, (*L.L. Olds Seed Co. v. Commercial etc. Ins. Co.*, 179 F. 2d 472). It was Avery who suggested that the claim be made on the basis of this decision. It seems clear to me that Avery was thoroughly aware of the facts relative to the damage suffered by Dr. Daniels and the nature of the claimed coverage.

Since Mr. Avery was acting within the scope of his apparent authority in making the denial of lia-

bility, the provision in the policy requiring the furnishing of the proofs of loss within sixty days was waived by the insurer. [31]

Plaintiffs are entitled to judgment as prayed for. Counsel for plaintiffs is directed to submit proposed findings and judgment to me under the rule.

Dated: This 30 day of April, 1951.

/s/ BEN HARRISON,  
Judge. [32]

[Endorsed]: Filed Apr. 30, 1951.

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[Title of District Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly for trial and was tried on December 28 and 29, 1950, and January 2 and 3, 1951, before Honorable Ben Harrison, United States District Judge. Plaintiffs appeared by their attorneys Arch E. Ekdale and John F. McCarthy, and defendant appeared by its attorneys Hindman & Davis by E. Eugene Davis. Trial by jury was waived by the parties. Evidence, both oral and documentary was received by the Court and the cause was submitted to the Court for decision. The Court, being fully advised in the premises and good cause appearing therefor now makes the following Findings of Fact and Conclusions of Law:

## FINDINGS OF FACT

## I.

At all times mentioned in plaintiffs' complaint defendant Hartford Fire Insurance Company was a corporation duly licensed and [33] authorized to do an insurance business in the State of California.

## II.

At all times mentioned in their complaint plaintiffs were husband and wife.

## III.

At all times mentioned in their complaint plaintiffs, as joint tenants, owned the frame building situated at 3003 Palos Verdes Drive East, Palos Verdes, California, and the same was located on Lot H, Rancho Palos Verdes, Los Angeles County, California.

## IV.

On December 1, 1948, defendant issued to plaintiffs upon said building the policy of insurance, a copy of which is attached to the complaint marked Exhibit "A", and in consideration thereof plaintiffs paid defendant a premium in the sum of \$120.00.

## V.

On March 9, 1949, defendant by endorsement of said policy of insurance, effective as of March 4, 1949, increased the amount of insurance on said building under said policy from the sum of \$10,000.00 to the sum of \$15,000.00 and issued the written endorsement thereon, a copy of which is attached to the complaint marked Exhibit "B", and

in consideration thereof plaintiffs paid defendant an additional premium in the sum of \$54.90.

## VI.

Said policy of insurance was issued for a term of three years beginning December 1, 1948, and ending on December 1, 1951, and the same was in effect at all times mentioned in the complaint and at all times since March 4, 1949, said endorsement of said policy of insurance was in full force and effect.

## VII.

On or about December 19, 1949, plaintiffs suffered direct loss to said property so insured by said policy of insurance caused by perils insured by said policy of insurance. Said direct loss was [34] caused by explosion occurring in said building so insured and from hazards inherent therein and resulted in the rupture or bursting of a water pipe which was a part of the insured building and caused the reinforced concrete slab, forming a part of said building, to be deformed and cracked, and caused the door and window frames and plaster of said building to be cracked, deformed and damaged, and by reason thereof said property so insured by said policy of insurance and plaintiffs were damaged in the sum of \$14,450.00. Said rupture or bursting of said water pipe was due to an explosion which caused internal pressure in said pipe. Said loss and damage was not caused by explosion originating within steam boilers, steam pipes, steam turbines, steam engines or flywheels, and was not caused by



explosion, rupture or bursting of steam boilers, steam pipes, steam turbines, steam engines or fly-wheels. The rupture or bursting of said water pipe was the result of an explosion within the terms of said policy of insurance.

#### VIII.

At all times mentioned in plaintiffs' complaint Hamman & Avery, a partnership, was the duly authorized agent of defendant in connection with all matters pertaining to said policy of insurance. Said Hamman & Avery, as part of their duties as such agent of defendant, were required to report to defendant all losses and claims coming to their knowledge. Defendant authorized and permitted its said agent Hamman & Avery to conduct itself before the public in such manner, and to become clothed with such indicia of authority as to cause the public and plaintiffs reasonably to believe that said agent was the duly authorized agent of defendant in connection with all matters pertaining to said policy of insurance.

#### IX.

On or about December 21, 1949, plaintiffs notified defendant of said loss by reporting the same to said Hamman & Avery as agent of defendant and at said time plaintiffs inquired of said agent as to [35] whether or not any action was required of plaintiffs under said policy of insurance. Said Hamman & Avery, acting as agent for defendant at said time, informed plaintiffs that said loss was not covered by said insurance policy and that defendant was not

obligated under the terms of said policy of insurance to indemnify plaintiffs for said loss or any part thereof. Plaintiffs believed and relied upon said statement of said Hamman & Avery and believing and relying thereon plaintiffs refrained from filing proof of loss under said policy or taking any action thereon until after the expiration of more than sixty days after December 19, 1949, and plaintiffs did not discover that said loss was covered by said policy of insurance until after the expiration of more than sixty days after said loss.

#### X.

On July 31, 1950, plaintiffs rendered to defendant at its main office in California, written proof of loss, a copy of which is attached to plaintiffs' complaint marked Exhibit "C".

#### XI.

On August 8, 1950, defendant served on plaintiffs the written notice attached to plaintiffs' complaint as Exhibit "D".

#### XII.

Plaintiffs performed all of the terms, covenants and conditions of said policy of insurance on their part to be performed.

#### XIII.

Defendant has failed, neglected and refused to pay plaintiffs said sum of \$14,450.00 or any part thereof, and there is due, owing and unpaid from defendant to plaintiffs the sum of \$14,450.00. Plaintiffs are entitled to interest on said sum of \$14,450.00

at the rate of 7% per annum from August 8, 1950 to the date of judgment.

### CONCLUSIONS OF LAW

From the foregoing Findings of Fact the Court makes the following Conclusions of Law: [36]

#### I.

The bursting of the water pipe in the insured property was a direct loss caused by explosion within the meaning of the insurance policy sued upon.

#### II.

Defendant waived the filing by plaintiffs of proof of loss within sixty days after said loss.

#### III.

Plaintiffs are entitled to judgment against defendant in the sum of \$14,450.00 with interest thereon at the rate of 7% per annum from Oct. 29, 1950, and for their costs.

Let judgment be entered accordingly.

Dated: May 17, 1951.

/s/ BEN HARRISON,

United States District Judge. [37]

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 17, 1951.

In the United States District Court, Southern  
District of California, Central Division

No. 12506-BH

ESLI H. DANIELS and HELEN J. DANIELS,  
Plaintiffs,

vs.

HARTFORD FIRE INSURANCE COMPANY, a  
corporation,

Defendant.

### JUDGMENT

This cause came on regularly to be tried and was tried by the Court sitting without a jury on December 28 and 29, 1950, and January 2 and 3, 1951, before the Honorable Ben Harrison, United States District Judge. Plaintiffs appeared by their attorneys Arch E. Ekdale and John F. McCarthy. Defendant appeared by its attorneys Hindman & Davis by E. Eugene Davis. Trial by jury was duly waived by the parties. Evidence, both oral and documentary, was received by the Court, the cause was submitted to the Court for decision and the Court has made and filed its Findings of Fact and Conclusions of Law. The Court, being fully advised in the premises and good cause appearing therefor, it is

Ordered, Adjudged and Decreed that plaintiffs have and recover from defendant Hartford Fire Insurance Company, a corporation, the sum of \$14,450.00 with interest thereon at the rate of 7%



per [39] annum from Oct. 24th, 1950 to the date of this judgment and that plaintiffs have judgment against defendant for their costs herein incurred, taxed in the sum of \$35.16.

Done in open court this 17 day of May, 1951.

/s/ BEN HARRISON,  
United States District Judge.

Judgment entered May 17, 1951. [40]

[Endorsed]: Filed May 17, 1951.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Hartford Fire Insurance Company, the above named defendant, hereby gives notice that said defendant appeals to the United States Court of Appeals for the Ninth Circuit from that certain judgment made and entered herein on the 17th day of May, 1951, and entered in Book 72, Page 498 of judgments in said Court, and from said judgment and each and every part thereof.

Dated this 14th day of June, 1951.

/s/ E. EUGENE DAVIS,  
Attorney for said Defendant  
and Appellant. [41]

[Endorsed]: Filed June 14, 1951.

[Title of District Court and Cause.]

## APPEAL AND SUPERSEDEAS BOND

Know All Men by These Presents:

That we, Hartford Fire Insurance Company, a corporation, as principal, and Hartford Accident and Indemnity Company, a corporation organized and existing under the laws of the State of Connecticut and authorized to transact a surety business in the State of California, as surety, are held and firmly bound unto Esli H. Daniels and Helen J. Daniels, in the full sum of Twenty Thousand Dollars (\$20,000), which sum well and truly to be paid we bind ourselves, our executors, administrators, successors and assigns, jointly and severally by these presents.

The condition of the foregoing bounden obligation are such that, [42]

Whereas, in the above entitled Court the above named plaintiffs, Esli H. Daniels and Helen J. Daniels, secured a judgment against the above named Defendant, Hartford Fire Insurance Company, a corporation, in the sum of Fourteen Thousand Four Hundred Fifty Dollars (\$14,450), with interest thereon at the rate of 7% per annum from October 29, 1950, and their costs taxed in the amount of Thirty-five Dollars and Sixteen Cents (\$35.16), which judgment was given on May 17, 1951, and entered in Book 72, Page 498, of judgments in the above entitled Court, and

Whereas, the above named Defendant, Hartford Fire Insurance Company, a corporation, has ap-

pealed from said judgment to the United States Court of Appeals for the Ninth Circuit, and desires to stay and supersede the execution of said judgment.

Now, Therefore, if the said Defendant, Hartford Fire Insurance Company, shall well and truly prosecute said appeal and shall fully satisfy said judgment, together with interest, costs and damages for delay, if for any reason the appeal is dismissed or if the judgment be affirmed, and shall satisfy in full any modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, then the above bond and obligation shall be void, otherwise to remain in full force and effect.

In Witness Whereof, the above named principal has caused these presents to be executed by its attorney duly authorized, and the above named surety has caused these presents to be executed by its duly authorized attorney-in-fact, and caused its corporate seal to be affixed hereunto at Los Angeles, California, this 14th day of June, 1951.

HARTFORD FIRE INSURANCE  
COMPANY, a corporation,

/s/ By E. EUGENE DAVIS,  
Its Attorney.

[Seal] HARTFORD ACCIDENT AND  
INDEMNITY COMPANY,

/s/ By J. K. STODDARD,  
Its Attorney-in-Fact.

Examined and recommended for approval as provided in Rule 8.

/s/ E. EUGENE DAVIS

I hereby approve the foregoing this 15th day of June, 1951.

/s/ BEN HARRISON,  
Judge

State of California,  
County of Los Angeles—ss.

On this 14th day of June, in the year 1951, before me, Eleanor G. Davis, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared J. K. Stoddard, known to me to be the Attorney-in-Fact of the Hartford Accident and Indemnity Company, the Corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the Corporation therein named, and he acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]        /s/ ELEANOR G. DAVIS,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires May 27, 1955. [43]

[Endorsed]: Filed June 15, 1951.

[Title of District Court and Cause.]

## APPELLANT'S STATEMENT OF POINTS

Appellant will rely upon the following points in the prosecution of its appeal from the judgment entered herein:

### I.

The District Court erred in finding that the property of Plaintiffs was damaged to the extent found in the judgment, or at all, by explosion as defined in the contract of insurance sued upon.

### II.

The District Court erred in finding and concluding that the property of plaintiffs, as aforesaid, suffered direct loss or damage by explosion.

### III.

The Court erred in concluding that Plaintiffs had [44] complied with the conditions precedent upon their part to be performed with reference to giving immediate notice of a loss and presenting Sworn Statement in Proof of Loss within sixty (60) days after the alleged loss.

### IV.

The Court erred in finding that the Defendant, through duly authorized agents, waived the provisions of the contract of insurance relating to the giving of immediate notice and the presentation of sworn statement in proof of loss.

### V.

The Court erred in finding and concluding that



- . Defendant was estopped to rely upon the failure of the Plaintiffs to comply with the conditions of the contract upon their part agreed to be performed with reference to giving immediate notice of loss and with reference to furnishing Sworn Statement in Proof of Loss within sixty (60) days after the happening thereof.

/s/ E. EUGENE DAVIS,

Attorney for Defendant and  
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 16, 1951. [45]

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 53, inclusive, contain the original Petition for Removal; Copy of all Processes, Pleadings and Orders Served Upon Defendant; Bond on Removal of Cause; Answer; Memorandum Opinion; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Appeal and Supersedeas Bond; Statement of Points; Designation of Record; Motions and Orders Extending Time, which, together with original plaintiff's Exhibit 1 to 9, inclusive, and Defendants A to G, inclusive, and copy of the reporter's transcript of proceedings on trial,

transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 10th day of August, A.D. 1951.

[Seal]

EDMUND L. SMITH,  
Clerk

/s/ By THEODORE HOCKE,  
Chief Deputy

In the United States District Court, Southern  
District of California, Central Division

No. 12,506—BH—Civil

ESLI H. DANIELS, et al.,

Plaintiffs,

vs.

HARTFORD FIRE INSURANCE COMPANY, a  
corporation,

Defendant.

Honorable Ben Harrison, Judge presiding.

## TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, December 28, 1950

Appearances: For the Plaintiffs: Messrs. Arch E. Ekdale and John F. McCarthy. For the Defendant: Messrs. Hindman & Davis, by E. Eugene Davis, Esq. [2\*]

The Court: You may call the calender.

The Clerk: Esli H. Daniels, et al., versus Hartford Fire Insurance Company, No. 12,506.

Mr. Davis: Defendant is ready.

Mr. McCarthy: Ready for the plaintiff.

The Court: Gentlemen, after reading the pre-trial statements furnished by counsel, it is apparent that the following question is involved. Of course

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\* Page numbering appearing at top of page of original Reporter's Transcript of Record.



the primary question is whether the loss was covered by the policy. And the second question is whether or not there was conduct on the part of the plaintiff that waived notice; and the third one is whether or not the amount involved, and this is contingent upon whether the first two questions are answered in favor of the plaintiff, whether the some fourteen thousand odd dollars represents the loss.

Aren't those the issues, gentlemen?

Mr. Davis: I think they are, your Honor. [3]

\* \* \* \* \*

### ESLI H. DANIELS

called as a witness by the plaintiffs, being first sworn, testified as follows:

The Clerk: State your full name.

The Witness: E. H. Daniels.

### Direct Examination

Q. (By Mr. McCarthy): Dr. Daniels, you are one of the plaintiffs in this action?

A. Yes, sir.

Q. And you are the owner of the property described in the complaint?      A. Yes, sir.

Q. And that is owned entirely by yourself and your wife, the other plaintiff?      A. Yes, sir.

Q. Will you describe the dwelling on that property?

A. It is our home. Do you mean by that the type of construction?

Q. Type of construction, yes.

A. It is a home built on a cement slab with a frame—wooden frame covered by redwood. For the

(Testimony of Esli H. Daniels.)

most part there is only a very small amount of brick on the outside.

It is a one-story rambling bungalow type of building. It has around 4,000 square feet in the building itself. [4]

Q. And about how many rooms?

A. Nine rooms not including the three bathrooms.

Q. And how is the house heated?

A. Heated by radiant heat.

Q. That is accomplished in what manner?

A. We have a hot water boiler that forces—that heats the water and the water in turn is forced through copper coils by a motor.

Q. And those copper coils are laid in the slab?

A. They are laid in the slab, yes.

Q. And then in parts of the house the slab is overlaid by oak flooring? A. That is correct.

Q. And is there an additional set of heating tubes in that, underneath the flooring?

A. There is beside the coils in the cement slab in those rooms that have the oak floor, there is also a layer of pipes underneath the oak flooring on top of the slab. [5]

\* \* \* \* \*

Q. (By Mr. McCarthy): Now, Dr. Daniels, did you have any hot water heaters in your home?

A. Yes, sir, we have two.

Q. And where are they located in the house?

A. One hot water heater is located in the room that is occupied by the radiant heat boiler. The

(Testimony of Esli H. Daniels.)

other hot water heater is located just outside our bedroom.

Q. Which is in the opposite end of the house?

A. Yes.

Q. Which is practically at the opposite end of the house?      A. Yes.

Q. Now, are those—coming first to the hot water heaters. Is that a steam heater?

A. No, it is a hot water heater.

Q. Are there any steam pipes?      A. No, sir.

Q. Of any kind or character in the house?

A. No steam pipes, no, sir.

The Court: Are the two hot water heaters complementary to [7] each other? Or are they separate?

The Witness: They are separate.

The Court: Do they tie into the same system?

The Witness: No.

The Court: Pipelines or anything?

The Witness: No.

The Court: So one hot water heater is used exclusively for the radiant heating?

The Witness: No, no. The hot water heaters are not used for the radiant heating.

The Court: Neither one?

The Witness: No, sir. They are for the hot water, for personal use for our bathrooms.

The Court: How do you heat the water?

The Witness: The radiant heating has a separate boiler entirely. It has a separate boiler.

The Court: Then the hot water heater didn't have anything to do with this?

(Testimony of Esli H. Daniels.)

The Witness: The hot water heaters—the radiant heat had nothing to do with it.

Mr. McCarthy: My purpose in going into the radiant heating system is merely because it has a bearing on the cost of repair.

The radiant heat itself, as I understand it, had nothing whatever to do with this accident, to make it clear. [8]

The Court: What I am trying to get clear is, and as I understood from your statement, it is your contention that the thermostat on one of the hot water heaters failed to function and it over-heated?

Mr. McCarthy: That is correct.

The Court: And because of that pressure the pipes in the flooring were broken.

Mr. McCarthy: That is right.

The Court: Causing an explosion. The reason I asked the question whether or not these hot water heaters are connected up to the radiant heater was to make that clear. From the testimony I understand they were not connected in any way.

The Witness: That is right. They are not used for the radiant heat. The radiant heat has a separate heating system entirely.

Q. (By Mr. McCarthy): Then you have two heaters for domestic water? A. That is right.

Q. One near your bedroom and the other one in the other end of the house?

A. In the room with the boiler that is used for the radiant heat.

Q. Now with reference to these two domestic hot

(Testimony of Esli H. Daniels.)

water heaters, are they on separate systems?

A. Yes. One of them supplies the hot water for our wash [9] room, for the laundry and the bedroom and the kitchen.

Q. In that end of the house?

A. In that end of the house. The other one supplies the water for our two bedrooms and bathrooms.

The Court: Then you have a separate boiler that furnishes the hot water for the radiant heat?

The Witness: Yes, sir.

The Court: What heats the water? What do you use for fuel?

The Witness: Butane or propane. I don't know which it is.

Q. (By Mr. McCarthy): In other words, there are three heating units for hot water?

A. That is right.

Q. One for radiant heating and two for the domestic water?

A. The hot water system, yes, sir.

Q. Now, coming to the morning of Sunday, December 19. At about what time did you arise that morning?

A. I was awakened about 7:00 o'clock.

Q. And what awakened you?

A. An unusual noise in the boiler room, as we call it. It makes so much noise there anyway.

Q. And what is the approximate distance from your bedroom to that boiler room?



(Testimony of Esli H. Daniels.)

A. Oh, it would be over 50 feet. Probably 75 to 80 feet.

Q. Upon awakening what did you do? [10]

A. I ran out to this boiler room, the heater room where the radiant heat is and where this water boiler is and the water boiler was going full blast. It wasn't the radiant heat at all. The water boiler was just going full blast and it was making an unusual sound. It is hard for me to describe the sound that it was making, but it is very similar to that that you hear in your car radiator when your car is overheated. It was a type of noise like that.

The Court: And that was the hot water heater?

The Witness: Yes, the hot water heater. That was not the radiant heat.

Q. (By Mr. McCarthy): And was the gas burner burning?

A. Yes, sir; the gas burner was burning very vigorously.

Q. Then what did you do?

A. I turned off the gas immediately.

Q. Was anyone present at that time?

A. Yes. My son was there. He had arrived a few—I don't know how long before, but his bedroom is right next to that boiler room and he had heard this unusual noise and had gone out there to see what was going on and he was just, as I remember, he was just squatting down looking at the thing and wondering—he said:

“Something is wrong—what should we do,” and I stooped down and turned the gas off.

(Testimony of Esli H. Daniels.)

Q. Then what did you do? [11]

A. Then I immediately went into the bathroom and turned the hot water tap on there.

Q. And what happened?

A. Steam came out with a lot of pressure—enough pressure to blow out a little copper—well, some copper strips that are in the faucet, as I understand it, to keep the water from splashing.

That steam came out of there and then as soon as I had turned that on I went into the kitchen and turned that hot water line on also and steam came out of that and a little water.

Q. Can you compare the quantity of steam that came from the faucet in the kitchen with that which came from the one in the bathroom?

A. No, I don't recall.

Q. That is, I mean was it more or less?

A. Well, I don't believe that it had quite the pressure. It didn't blow out the little copper splash arrangement that it had in the faucet in the kitchen that it did in the bathroom.

Q. How long did steam continue to issue from the hot water faucet in the bathroom?

A. Not very long. A matter of—well, I would guess 10 minutes but I don't know. Maybe it was only two or three but it wasn't very long. Just a short time. [12]

Q. Did you then close the faucet in the bathroom?

A. No; I left the faucet open.

Q. And how long did you leave it open?

(Testimony of Esli H. Daniels.)

A. Well, I think it was probably open all day long.

Q. Did water issue from the hot water faucet in the bathroom at any time that day after you had opened it and found steam?

A. No, no water came at all.

Q. And how about the one in the kitchen?

A. No water came out of that, either.

The Court: You just turned off the gas?

The Witness: I just turned off the gas, yes.

Q. (By Mr. McCarthy): But you did open the faucets, too? A. That is correct.

Q. And you got steam out of them?

A. Yes, sir.

Q. And you left them open and at no time later that day did any water come out of either of those hot water faucets? A. That is right.

The Court: Did any water come out?

The Witness: No, except when I first turned it on there was.

The Court: But after that first pressure no water came through?

The Witness: No. [13]

The Court: Even cold water after the gas was turned off?

The Witness: No.

The Court: And you hadn't turned off the water?

The Witness: Oh, no.

Q. (By Mr. McCarthy): Now then what did you do?

A. Well, we didn't really—didn't do anything



(Testimony of Esli H. Daniels.)

until—that was on a Sunday morning and so I didn't want to disturb Kenneth Wing, who is a very good friend of mine and the architect, so I waited until about 8:00 o'clock and called him and told him that the water heater had—that the thermostat on the water heater had stuck again.

Q. It had stuck previously, had it?

A. It had stuck previously, that is right.

Q. And had been replaced? A. Yes.

Q. And that was a new thermostat?

A. It was a new hot water heater. It was approximately six weeks before that. I don't recall the exact date.

The Court: When it was stuck before did you have the same result?

The Witness: No, no. The water before—when it happened before the steam came out and then eventually hot water and then it quieted down and that was during a week day and so we got either the plumber or the Crane people. They came out and put in a new thermostat and everything was all right. [14] Then I just turned off the gas.

The Court: How did you know the thermostat wasn't working?

The Witness: Because the water was overheating.

Q. (By Mr. McCarthy): By the way, Doctor, when was this house built?

A. It was started—I believe it was started the first day of September.

Q. Of what year?

A. The first day of September of 1948.

(Testimony of Esli H. Daniels.)

Q. And when did you occupy the house first?

A. We moved in—I believe it was on the first day of July.

Q. Now, you had lived in the house then only a matter of six months or so when this occurrence happened?

A. Yes.

Q. Now, after you had called Kenneth Wing what did you do?

A. Well, I talked to him about it and he said:

“Well, don’t worry. The water will come back. It is just backed up into the line and it will come back.”

That is what I had been informed before either by Kenneth Wing or by the contractor. I don’t know who had told me before when this thing happened. They said:

“Well, now, if the water heater overheats it [15] will back up into the line and you may not get water for a little while and then the water will come back.”

Q. By “it” you mean steam would back up into the line?

A. The steam would back up into the line and that would keep the water from coming for a short while and then the water eventually would return.

Q. Did water return on the hot water faucets in the bathroom—the ones that you opened, or the kitchen, at any time until repairs were later made?

A. No, sir, not this last time that we are referring to.

Q. Yes, that is what I am referring to.

(Testimony of Esli H. Daniels.)

A. Yes.

Q. Now, following that did you hear water running in the house?

A. Well, yes, I did. The noise it makes when you—like when you turn on a faucet on the outside of the house or around the house. There was a noise.

Q. Now when did plumbers first arrive?

A. Well, that being a Sunday morning we couldn't get a plumber that day and then I called up Kenny that evening again about—I forget what time it was, but it was in the evening sometime, and told him—I said:

“Well, we still don't have any water coming out of those faucets”, and [16] “Is something wrong?” and he said: “Well, I guess there must be”, and he said, “We will send a plumber out there as soon as we can get one tomorrow.”

Q. Then did a plumber come?

A. Yes, a plumber came along about 3:00 or 4:00 o'clock Monday afternoon.

Q. And were you there?

A. I was there at the time.

Q. Your working hours, by the way, are from very early morning until shortly after noon?

A. That is right.

Q. And what did the plumber do?

A. Well, we went out to the—went out to the room where we have the water softener and it sounded like water was running in the water softener and there was also water on the floor around the water softener and before that—by the way, I

(Testimony of Esli H. Daniels.)

should maybe state that I had turned the water off, the whole system off along about when I came home from work—along about noon, I believe it was, and then you couldn't hear any noise then. But it did sound, when you turned the water on, the main valve, it sounded like there was water running in the water softener and I felt that was what happened, not knowing [17] anything about the plumbing system. It just sounded like the water was backing up into the water softener.

The plumber thought so too because he immediately tore out these water softeners. That was the first thing he did, was to dismantle them and take them out. They are very large things. He took them out and then he decided, well, that isn't the trouble because there wasn't any water there.

The Court: I have had a plumber at my house for the last two or three days so I can understand that.

Mr. McCarthy: They are independent characters.

The Witness: Then he said:

“Well, we are going to have to knock a hole in your floor. I am awfully sorry but we are going to have to knock a hole in the concrete slab and find out where this line is.”

He said:

“I think I know where the trouble is because,” as I remember he said, “I am the one that installed this line.”

So he knocked a hole just outside of the water softener room.



(Testimony of Esli H. Daniels.)

Q. (By Mr. McCarthy): Was that the same day?

A. Same afternoon, yes. And he didn't find anything. He found the pipe. He found the pipe which was intact and he said: [18]

"Well, that isn't your trouble. I will come back tomorrow."

I said:

"Well, we have got all the water shut off here now in the house. How are we going to stay here. I can't move out until you come back and turn the water on for me."

And I said:

"Can't you connect around some way so that we can get water in our back bathroom", which is our bedroom, "so that we can stay here tonight anyway," and he said:

"Well, it is getting awfully late but I will do that."

So he did then connect from the outside tap around some way—I don't know where he connected it, but he used the hose and connected it around and we were able then to get water in our back bathroom for the night.

Q. (By Mr. McCarthy): And then what was done?

A. Nothing was done that day. Nothing more was done. He went home. It was getting dark and he didn't want to work overtime, I guess.

Q. The next day what was done?

A. Well, the next day—I, of course, went to my usual [19] work and I didn't get home until about

(Testimony of Esli H. Daniels.)

noon as I recall. It may have been early afternoon or it may have been a little bit before noon.

I believe that that was the day that I came in the house and my wife said:

“Well, we have really—we have really got some trouble. Come here and look.”

And then the living room and dining room combination, which has a large window across the side going out into the patio was all steamed up. The room was just full of steam and there were quite a number of men around the house, including the contractor.

Q. And who was that?

A. That was Russell Best and several other men.

I believe one of them was the man that had been out there the night before and my son was there and I believe the engineer from Kenneth Wing’s office. I don’t know whether Kenneth was there or not. I don’t think he was. I am not sure. There were quite a few people.

Q. An engineer from Kenneth Wing’s office was whom?

A. A man they call Emmy.

Q. Mr. Reynard?

A. Yes, sir.

Q. Is he sitting in the back of the courtroom?

A. I believe he is the one. There was some engineer there, [20] but there was so much confusion I wouldn’t state definitely that it was he that was there, but I think it was.

Q. Now, had they found any break in the lines?

A. Yes. They said they had at that time and

(Testimony of Esli H. Daniels.)

they had knocked a hole through the bedroom—through my boy's bedroom floor.

Q. Could you indicate on these plans where that was found?

A. Yes, I can show the bedroom. Here is the bedroom here, this room, and here is the boiler room there.

Q. Would you mark the water—

The Court: Doesn't the plan speak for itself as to where they are located?

Mr. McCarthy: Yes.

Q. (By Mr. McCarthy): Well, can you indicate on this plan where this hole was knocked through the bedroom floor?

A. Well, approximately in this area some place—some place in this area.

The Court: You have made a circle with red pencil there.

The Witness: Yes, sir.

Mr. McCarthy: Shall we call that "A"?

Q. (By Mr. McCarthy): And how large was that hole, Doctor?

A. Well, it looked to me like a pretty good sized hole. The reason that I thought it was a pretty good sized hole was because I knew there was radiant heat in the concrete and I didn't see how they could have missed the radiant heat pipes [21] going down through there but they apparently did. So I imagine the hole was at least a foot in diameter.

Q. And when you saw the hole had any of the pipes been removed from it?



(Testimony of Esli H. Daniels.)

A. I looked down into the hole and the man that was working on the thing said that they had found the trouble and they were working on a three-quarter inch galvanized pipe—iron pipe.

Q. And that was where it broken? They told you that was where the break occurred?

A. Yes. They told me that was where the break had occurred, yes.

Q. Now, was that repaired?

A. Yes, they repaired it.

Q. And following that you were able to get hot water on the—you got water on the faucets in the bathroom and in the kitchen?

A. Yes, surely. It was repaired that day and at the same time, while these men were working that very same day—I believe it must have been—I am sure that it was, the men came out and put another thermostat on this heater.

Q. That is the hot water heater?

A. Yes, sir.

Q. Domestic hot water heater?

A. Yes. [22]

The Court: Did the third one work?

The Witness: Yes, it has worked so far. I keep my fingers crossed but they put a new safety valve on it, too, at that time.

Q. (By Mr. McCarthy): So any steam will discharge through the roof? A. That is right.

Q. Now following the making of repairs there did you notice any changes in your home?

A. Well, within a week's time the whole struc-

(Testimony of Esli H. Daniels.)

ture of the house had changed. It seemed to us—in the rooms that have the oak floors that is where the most spectacular thing happened, where the steam was coming up through the cracks, coming up through the floors, the oak floors.

The Court: You say “the steam”?

The Witness: Yes, there was steam coming up. At that time the radiant heat was on, you see, and functioning so the floors themselves were hot and there was steam coming up through there and all the oak floors, each one of them, buckled. They are constructed, I believe, maybe four inch and six inch and possibly eight inch oak flooring and each one, where the joints came together, it just buckled up all over and then there were cracks appeared in the walls and they would just happen all of a sudden. We were standing there looking at a wall and it just made a loud bang and popped and a nice big crack would appear over a doorway. [23]

And all this took place—it continued on for about a week.

The Court: May I ask Mr. Davis a question? You are not disputing the fact that there was a break in the pipe and considerable damage was done there, are you?

Mr. Davis: I am not disputing the fact there was a break in the pipe.

The Court: And that there was seepage that caused considerable damage?

Mr. Davis: No, I will concede that something has happened to that house which caused a lot of

(Testimony of Esli H. Daniels.)

damage. I saw it night before last. Whether it is faulty construction or this thing did it I don't know, but it is in bad shape. There is no question about that. The floors are buckled and the concrete floors was wavy. You couldn't use the floor for a roller rink and they showed me——

The Court: Then let us get down to what was the cause of this condition. The doctor is a layman. All he knows is that something happened to a pipe and the water got loose under his house and what caused it he doesn't know. Isn't that true, Doctor?

The Witness: Yes, I know——

The Court: All you know is that something happened.

The Witness: Something happened and it was very drastic and dramatic. [24]

Mr. Davis: Counsel has some pictures here of the situation and I think it would help us all to see them. I think your Honor would get a better idea if he saw those pictures.

Mr. McCarthy: We will be very happy to show them.

The Court: The only thing is, gentlemen, I don't know the engineer who built the house or the people who cut through the floor and found the place where the leakage occurred. I don't know whether you have that section of the pipe or not.

Q. (By Mr. McCarthy): Do you know where the pipe is, Doctor?           A. No, sir, I do not.

Mr. McCarthy: Actually none of us know where

(Testimony of Esli H. Daniels.)

it is. We assume it may be down under the house. If your Honor would like to see the pipe——

The Court: I am not going under the house to find out.

Mr. McCarthy: We would have to cut a hole through the floor to see if it is there. I don't know where it is and no one I have talked to can say positively where the pipe is. They have an idea that it may have been just left under the house when they repaired the floor.

Now if your Honor thinks it would be important we can have men go in there and dig it out.

The Court: You are claiming an explosion and you have the burden of proof.

Mr. McCarthy: That is right. [25]

The Court: It seems to me that piece of pipe should have been submitted to some expert over at Caltech who could probably answer that better than anybody else—whether the break in the pipe was caused by an explosion or a defect in the pipe or what caused it.

Mr. McCarthy: We believe, your Honor, we have a complete explanation for it regardless of what the pipe shows.

The Court: I can imagine what happened to the buckled floors but that goes into the element of damages. We are first trying to determine what caused it.

Mr. McCarthy: Well, of necessity, your Honor, it is necessary for me to lay some foundation so I can ask hypothetical questions of the engineers and

(Testimony of Esli H. Daniels.)

that is why I am going into some of these facts with Dr. Daniels.

I don't know whether counsel intends to contest the amount of damage or not. His pleadings would indicate he doesn't have much quarrel with that.

Mr. Davis: No, and this is my own statement, but as your Honor gathers from the pleadings we were not notified of this until many months after. The only investigation that could be made was an examination and note the damage. We agree it would take approximately the amount of money that they claim to make a good house out of it. By admitting that I am not admitting the condition the house was in or what brought it about—that it was a broken pipe or an explosion or a boiler [26] or anything else.

Mr. McCarthy: Assuming it to be a valid claim the amount is correct.

Mr. Davis: Yes, we will not go into dollars and cents.

Mr. McCarthy: I am glad to know that.

Mr. Davis: I don't see any need of it. I saw the house myself and not even being remotely a carpenter contractor I know it is going to cost a lot of money to make a good house of it again.

The Court: The house has never been repaired?

Mr. McCarthy: No, and this happened about a year ago, Doctor?

The Witness: Yes, sir, last December.

Q. (By Mr. McCarthy): And to what extent have repairs been made?



(Testimony of Esli H. Daniels.)

A. Well, the only repairs that I have made myself—I had to level out the floors so we could walk on them without falling down and in the large hobby room I have covered that floor with a carpeting that completely covers up the cracks so it doesn't show any more.

The Court: Did this affect the walls of the house?

The Witness: Well, some of them are cracked and they have changed—they have shifted enough so that the doors won't shut. The doors that were open won't shut and the doors that were shut we couldn't open and I had to take them off and cut [27] the bottoms off the doors and so forth so they would function.

Q. (By Mr. McCarthy): But no substantial repairs have been made?

A. No. We have had no carpenters or contractors come in and do anything yet.

Q. Now, following this occurrence did you have any conversation with anyone connected with the Hartford Fire Insurance Company?

A. Yes, sir; within a week I called up my insurance agent, who is Bob Avery and——

Mr. Davis: At this point I will object to any conversations had with Bob Avery unless he establishes his authority to speak in this matter for the company.

The Court: Gentlemen, I can't hear all the evidence at once. I think you had better let me have

(Testimony of Esli H. Daniels.)

the facts and then when we get through we will try to iron them out.

Mr. Davis: It will go in over my objection.

Q. (By Mr. McCarthy): Mr. Avery is the man who signed the policy and it is admitted in the pleadings that Mr. Avery is the agent, and not a broker, but the agent of the Hartford Fire Insurance Company. The pleadings in this action admit that. They do deny, however, he had any authority to waive any of the terms of the policy and so on, but that is, I think, a question of law.

The Court: That is a question of law. [28]

Mr. McCarthy: Yes, but the pleadings admit that Avery was their agent.

Mr. Davis: That is true, we admit he had authority to execute and deliver policies.

The Court: But it is your position that he didn't have the authority to waive the provisions of the policy relative to notice?

Mr. Davis: Yes, and the authorities are too numerous to mention. The authorities are numerous either as to accepting notice or notice of loss—accept proof of loss or to waive notice or proof of loss unless he shows specific authority.

The Court: I am going to overrule the objection subject to a motion to strike. I will permit this testimony to go in so I can get the picture.

You are starting out with a house up there in the San Pedro Hills and I want to see what you have.

Q. (By Mr. McCarthy): You had a conversation with Robert Avery?      A. Yes, sir.



(Testimony of Esli H. Daniels.)

Q. And about when did that occur?

A. Within the week after this had happened.

Q. And who were present?

A. It was a telephone conversation.

Q. And what was said?

A. Well, I called him up and I said: [29]

“Bob, I think that I had better increase my insurance, seeing what has happened out here. I am afraid the place is going to burn down next,” and I said—well, I started—first I started to tell him what had happened.

The Court: What did you tell him?

The Witness: I told him that the water heater had stuck and that the damage is very severe and he said: “Well, I know about that”, he said, “because Kenneth Wing had been in to see me and see whether you are covered on this”, and I said: “Well, I am not covered.” He said: “No.” He said: “No, your policy does not cover anything like that”, and then is when I said: “Well, I had better take out more insurance anyway because I am afraid the place is going to burn down next.”

Q. And did you subsequently take out—

A. Yes, sir, I doubled the policy.

Q. And did you believe what Mr. Avery told you, that it [30] was not covered by the policy?

A. Surely.

Q. And because of that you refrained from filing proof of loss under the policy?      A. Yes.

Q. When did you first discover that it was covered by the policy?

(Testimony of Esli H. Daniels.)

A. Well, it was several months later. I don't know the exact date. It was quite a while later that Bob Avery or Clay Hammond, or one of the two, wrote us a note to the effect that there had been a similar case to ours and it was just a recent one and that the insured had been able to collect. And he said—I think he said: “I think you are covered.”

Q. But that was more than 60 days after the occurrence?

A. Yes, that was considerable after 60 days.

The Court: Then what did you do?

The Witness: Then I immediately got to work on the thing and called Mr. Ekdale or talked to him about it and he seemed——

The Court: Then did you file your claim, your proof of loss?

The Witness: Very shortly after that, yes, sir.

The Court: Where did you get your form for the proof of loss?

The Witness: Mr. McCarthy took care of that for me. [31]

Q. (By Mr. McCarthy): And that was filed with the Hartford Fire Insurance Company in San Francisco?

A. Yes, sir.

Mr. McCarthy: Most of the remaining facts, your Honor, are admitted in the pleadings. We attached the proof of loss to the pleadings and the insurance company admits having received it.

The Court: Any question about that?

Mr. Davis: No, we admit the receipt and the

(Testimony of Esli H. Daniels.)

date it was received. I think it was sometime in May or June.

Mr. McCarthy: Yes, the facts are all admitted in the pleadings.

Q. (By Mr. McCarthy): One other thing. Did the representatives of Hartford Fire Insurance Company have an opportunity to observe the damage to your property? A. Yes.

Mr. Davis: Just a minute. I am going to object to that. That calls for a conclusion. I think he had better tell us what and when and who saw it.

Mr. McCarthy: I propose to follow that up. That was a preliminary question.

Mr. Davis: I will withdraw the objection if it a preliminary question.

The Witness: You said did representatives from the Hartford Fire Insurance Company——

Q. (By Mr. McCarthy): Inspect the property.

A. Inspect the house?

Q. Yes.

A. A man came out there and said he was a representative of the Hartford Company, yes.

The Court: That was after you filed your proof of loss?

The Witness: Yes, sir; they were out there just about—within the week. They were out there very shortly after that.

Q. (By Mr. McCarthy): Was that before the formal proof of loss or before they were informally notified?

(No answer.)

(Testimony of Esli H. Daniels.)

Q. Do you recall anything about that?

A. I don't recall.

Q. Do you recall the exact date when they were out there?

A. No, sir, I do not. I know I was surprised that they got out there so quickly. Then I thought we were going to get some action out of the thing.

Q. And at the time the—do you recall the name of anyone who was out there?

A. No, I do not.

Q. You have met Mr. Shields?

A. Yes, sir.

Q. Did he inspect it?

A. My wife says that he did.

Q. You were not there?

A. I was not there. [33]

Q. Very well. At the time these inspections were made was the house in substantially the same condition that it was, say, two weeks after this pipe burst?

A. Yes, sir.

The Court: And in their inspection they didn't have an opportunity to see where the pipe had broken, did they?

The Witness: No, except we took them into the room and showed them where they had dug the hole.

The Court: The concrete had been replaced?

The Witness: Yes, sir.

The Court: So there was nothing for them to see except the result of the break?

The Witness: That is right.

(Testimony of Esli H. Daniels.)

Q. (By Mr. McCarthy): Did you offer to allow the floor to be opened in case they desired?

A. I told them they could do anything they wanted to. I remember there was one man that came out and was going to—said he wanted to take a lot of pictures and then he got his camera out and found something was wrong with the camera and didn't take any pictures. And there were some other men that did take some pictures, however.

Q. But you afforded the Hartford Insurance Company every opportunity—

A. Yes, sir.

Q. To inspect everything that had happened there? [34]      A. Yes, sir.

Q. How soon was that break in the hole in the floor that you have indicated on the plans here filled up after the repairs?

A. I believe it was the same day.

Q. As soon as the repairs were made?

A. Yes, sir. I think they did it the same day.

Q. It was closed up?      A. Yes, sir.

Q. Did you yourself see the pipe that was broken?

A. No, I didn't arrive home until after the pipe had been repaired. The plumber, I think, was just finishing the repair when I arrived home.

The Court: Do you have the plumber as a witness?

Mr. McCarthy: We hadn't planned on calling him but we can. We have an engineer who saw it.

Mr. Davis: I will say that we ran down the



(Testimony of Esli H. Daniels.)

plumber and we found out where he is and we have a subpoena for him and we are going to have him if he is available. [35]

\* \* \* \* \*

### Cross Examination

Q. (By Mr. Davis): And you discovered this condition of your heater on Sunday morning?

A. On Sunday morning, yes.

Q. You had your party there that night?

A. Yes, we had the party there that night.

Q. Everything went over all right and you had plenty of water? A. No water in the kitchen.

The Court: You didn't need any water at that time of the year.

The Witness: We had no water in the—no hot water in the kitchen. The reason I remember that is because my wife had to go to our bathroom in the bedroom on the other side of the house to get hot water to wash the dishes. [42]

\* \* \* \* \*

Q. All of your house was served, of course, by one main water supply?

A. Yes, sir, that is correct.

Q. And that came into the house through a reduction valve, didn't it? A. Yes, sir.

Q. Which reduced the pressure to 45 pounds?

A. Something like that. [44]

\* \* \* \* \*

Q. Now on this particular occasion, the night before you noticed nothing unusual—that is Saturday night. A. No, nothing unusual.

(Testimony of Esli H. Daniels.)

Q. And about 7:00 o'clock Sunday morning you heard a hissing sound like the steam hissing in a radiator that is overheated?

A. Yes, sir, something like that.

Q. Like a teakettle that is overheated—a steam hissing sound?

A. Yes.

Q. And you went out and found your boy who said he had heard the same sound—it awakened him up from sleep?

A. Yes.

Q. And you immediately turned off the gas?

A. That is right.

Q. That means turning off the main gas feed for this one [47] heater, is that right?

A. There is a little—just a little handle on the heater that you throw. It is a little red handle that they told me if it ever happened just to throw that.

Q. And that turned off the gas?

A. That turned off the gas, yes.

Q. Just on the one heater?

A. Yes, that is all.

Q. The other heaters were still going?

A. Oh, yes.

Q. And then you immediately went to the kitchen and opened the hot water tap there?

A. I went to the bathroom first.

Q. And opened the hot water cock?

A. Yes.

Q. And steam and hot water came out?

A. Yes; a small amount of hot water—a very small amount.

Q. And how long did you keep that cock open?



(Testimony of Esli H. Daniels.)

A. That was open all day long.

Q. How long did steam come out of it?

A. It was under 10 minutes, I believe. It was just a short time.

Q. And how soon after you opened that cock in the bathroom did you go to the kitchen cock?

A. Right away—just as fast as I could get there.

\* \* \* \* \* [48]

Q. And when you opened up the hot water faucet in the kitchen steam and water came out?

A. Yes.

Q. And how long did steam and water come out of there?      A. A very short time.

Q. About the same time as in the bathroom?

A. Yes, just a short time. [49]

\* \* \* \* \*

Q. You hadn't heard any noise of running water before Monday?

A. Well, on Sunday night we had, yes. We had both commented that it sounded like one of the outside water taps was running.

Q. Sounded like a tap was open?

A. Yes. In fact I felt like—I went around to see whether it was or not.

Q. Well, you don't remember that you did go around?

A. I don't recall whether I did or not but it kind of seems like I must have because it sounded just like water was running some place in the house and we couldn't find it. [54]

\* \* \* \* \*

(Testimony of Esli H. Daniels.)

Q. Now, you notified—you said you discussed this matter with Mr. Avery. You didn't call him particularly to notify him of the loss, did you?

A. Well, yes, I think I probably did. I think I did and when I started talking to him about it he said that he already knew about it.

Q. Mr. Wing's office is in the same building, I believe? A. In the same building. [59]

Q. As Avery's? A. Yes, sir.

Q. Do you have an office there? Are you interested in that? A. Oh, no.

Q. Well, what did you tell Mr. Avery had happened?

A. Well, I started to explain about the water heater and about the thermostat sticking and he said he already knew about it—knew the condition and so then I didn't go on and explain any further to him. He knew about it.

Q. And then you just forgot it until somebody read this case?

A. I asked him isn't there any chance that we are covered with our fire insurance and he said, "No, I am sorry, but it doesn't cover that", and then of course I went on to say "that is the way all insurance is, it never covers what you are supposed to have, but I had better increase my fire insurance anyway to \$30,000", and he said "Okay, we will take care of that for you."

Q. Then who was it called your attention to this water case? Mr. Avery?

(Testimony of Esli H. Daniels.)

A. I believe it was Mr. Avery. Either Mr. Avery or Mr. Wing.

Q. And after that then you did notify—had them notify the Hartford Company, correct? [60]

A. I did.

Q. Mr. McCarthy—

A. Another thing I should state, when I was talking to Mr. Avery at that time I am sure that he said that he called Los Angeles on it and that they said that we were not covered.

Q. And that was later though?

A. No, that was at that time.

Q. And then after that, after they told you about this case in the books—

A. Then I immediately got hold of Mr. Ekdale, who is a friend of mine, and talked to him about it and he said: "Well, we had better do something about it."

Q. Give them notice?                      A. Yes.

Q. Now, following—when was the first time that you discovered any damage to the property, to the house?

A. That was on Tuesday when things started to happen.

Q. What first happened?

A. Well, I think the first thing that I noticed was the steam coming out of the floors there in the living room, because the windows were all steamed up.

Q. Now this water pipe that broke, that is under the slab, isn't it?

(Testimony of Esli H. Daniels.)

A. That is right. It is under the—yes, it is under the slab. [61]

Q. And under the tar paper? A. Yes.

Q. And yet there was steam coming out of the floors that are laid over the secondary heating system. Are those the floors you are talking about?

A. Yes, sir.

Q. And did you open up the floors?

A. Yes, we did. We opened it up. In fact, it was either that day or the next day that Mr. Best sent a man out to open things up and let the steam out so that it would dry out faster.

Q. Did you find any water on the floors when you opened them up?

A. No, they were just damp. There was no water. Just dampness. [62]

\* \* \* \* \*

Q. When did you first notice the floors buckling?

A. Just right away—within 24 hours or 48 hours.

Q. Of when?

A. Of this—of Monday. I think it was on Tuesday that we first started to notice the floors buckling because there was steam coming up through the oak floors and the oak was pretty well dried. [63]

\* \* \* \* \*

Q. How long after the 18th was it before you noticed any distortion in the walls?

A. That was within a week—within a week and I would say within two or three days.

(Testimony of Esli H. Daniels.)

Q. Now previous to that you had had some cracks appear in the house, had you not?

A. Over in the garage part where the concrete is fairly thin there was a crack over in that part of the house, yes. [65]

\* \* \* \* \*

Mr. Davis: I think that is all.

#### Redirect Examination

Q. (By Mr. McCarthy): Did you observe any distortion or cracks in the walls inside before this occurrence on December 18th? A. None. [66]

\* \* \* \* \*

#### EMERON REYNARD

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

\* \* \* \* \*

#### Direct Examination

Q. (By Mr. McCarthy): What is your occupation?

A. Superintendent for Mr. Wing, architect.

Q. And how long have you been so employed?

A. A little over five years.

Q. And state the nature of your duties with Mr. Wing.

A. I supervise the construction of the various projects that we have designed in our office, through the entire construction period. [68]

\* \* \* \* \*

The Court: Before you get to that, did you superintend the construction of this house?



(Testimony of Emeron Reynard.)

The Witness: As far as Mr. Wing's portion was concerned, yes.

The Court: What was his portion?

The Witness: Well, I mean that we didn't maintain a [69] superintendent on the project at all times.

The Court: I know, but did you construct the entire house?

The Witness: Yes, sir.

The Court: What about the plumbing and the radiant heating? Did you have anything to do with that?

The Witness: Why, the plumbing, of course, was done as a part of the general contract and the radiant heating was done as a separate contract but it was handled through our office.

The Court: Did you handle it and supervise the construction of the flooring of this building?

The Witness: Yes, sir. [70]

\* \* \* \* \*

Q. Now, did you inspect the Daniels property at any time—at or about December 18, 1950?

A. I don't know the date. If it is in reference to the time that the water pipe was broken, yes.

Q. That is it. And how did you happen to go there?

A. I was instructed by my office to go to the Daniels residence; that they were making repairs on a water line that had broken.

Q. And when you arrived there who were present?

(Testimony of Emeron Reynard.)

A. As I recall there was the plumber, who I don't know his name, and his employer, Mr. Ward, and Mr. Best.

Q. Who was the contractor?

A. The contractor. And as I recall it also Mr. —Dr. Daniels came in a few minutes later.

Q. Were you there when the opening in the floor was made?

A. Not the initial opening, no. At the time I arrived there there was an opening in the floor and it wasn't large enough for the plumber to get his tools in and they proceeded to make the opening larger for that purpose.

Q. Now, did you observe any piping in that hole before any repairs were made? A. Yes.

Q. Describe what you saw there.

A. At that point there is a "T" and the pipe at that [73] "T" was broken. There was a slip-gap between the pipe itself and the "T".

Q. Can you mark on the diagram Mr. Reynard—perhaps it would be best to use the floor plan—the location of the hole? You might use this pencil. Will you mark there the hole that you observed?

A. Substantially the same as whoever marked this.

Q. At the point "A" shown on sheet 3?

A. Yes.

Q. And will you indicate the location of the pipe?

A. Do you want me to draw it on here?

Q. Draw it right on the drawing.



(Testimony of Emeron Reynard.)

A. The pipe was going this way and here is our —there was a gap on this side of it. The pipe went on this way. This pipe went this way and this one continued on this way. The gap was right here.

Q. Indicating that the gap was on the southerly side?      A. Yes.

The Court: You say a “gap”. What do you mean by that? Was the pipe completely broken in two?

The Witness: Yes; the pipe was completely broken in two.

The Court: Right up against the “T”?

The Witness: No, a slight space between the “T” and the pipe.

Q. (By Mr. McCarthy): Did it break in the threaded portion [74] of the pipe?

A. I believe it did.

Q. Was it a square break?

A. I would say so, as reasonably as could be made on a piece of pipe.

Q. And the “T” and the broken end of the pipe were separated?      A. Yes.

Q. And what was the amount of the separation?

A. Well, I would say between an eighth and a quarter of an inch.

Q. And in making the repair what was done?

A. The pipe was cut back. I don't know how much. I would say approximately six to eight inches and threaded and a swing joint constructed of ells and placed back in operation again.

The Court: How was that? You say he cut back the pipe and threaded it?

(Testimony of Emerson Reynard.)

The Witness: Yes, sir.

The Court: And then did he take the thread out of the "T"?

The Witness: I presume so. I didn't see it being taken out but there is no other way it could have been done.

The Court: And then a short piece of pipe inserted there?

The Witness: Well, the pipe was brought out with an ell down and around and back up and over to the other pipe so [75] as to constitute a swing joint and the thought was at the time if there was any movement that joint would give instead of giving any trouble at this location. It was constructed of all pipe fittings.

Q. (By Mr. McCarthy): Did you observe whether or not any of that pipe shown in the circle "A" here was rigid? Was it possible to move any of those pieces of pipe? A. I don't know.

Q. You didn't get down and feel it?

A. No.

The Court: Those pipes were not buried in the concrete? They are below the concrete?

The Witness: Yes. As I recall it they were below the water-proofing membrane and either in or on top of the rock.

Mr. McCarthy: I think that is all. [76]

\* \* \* \* \*

### Cross Examination

By Mr. Davis:

Now, I want to ask you about this occasion when you came to the premises after there had been some

(Testimony of Emeron Reynard.)

mal-function in the hot water heater. When was the first time you heard of any mal-function [104] in the hot water heater?

A. I don't recall the date. Mr. Wing informed me that the thermostat on the water heater had gone bad and was replaced. I didn't go up to the job at that time.

Q. But you had heard of it previously—you had heard of the previous occasion? A. Yes.

Q. And you didn't go then the next time—the next time was this occasion we are talking about now? A. As far as I know, yes.

Q. And when did you first hear of that?

A. I don't recall whether I was in the office at the time or whether I was out in the field, but I was informed that the plumbers were making some changes and Mr. Wing wanted me to go up to the job and see what was going on.

Q. And when you got there who was there?

A. Mr. Best, Mr. Ward, also the plumber whose name I don't know, and myself. I don't recall anyone else.

Q. Was Dr. Daniels there?

A. I don't remember whether Mrs. Daniels was there or not. Mr. Daniels came shortly after I arrived.

Q. When you arrived had they already cut the hole?

A. They had started to work on it, yes.

Q. Did you stay in the immediate vicinity while they were cutting the hole? [105]

(Testimony of Emeron Reynard.)

A. Yes, sir.

Q. Do you know how they located the place of the leak or were you there when they located it?

A. No, I was not.

Q. When they got the hole through the concrete then what was the first thing you saw?

A. Well, the membrane was still intact at that point. I believe it was ruptured but it was there and then——

Q. Did they make a hole in the membrane?

A. Yes. And then the plumber decided the hole would have to be larger than he originally had it so he continued to break the concrete to the point where he could get his tools in to work.

Q. How large a hole did he finally have?

A. About 12 inches in diameter.

The Court: You said the membrane was ruptured?

The Witness: Yes, sir.

Mr. Davis: But it was still there.

The Court: In what way was it ruptured?

The Witness: It is just paper.

The Court: They had located, as I understand your testimony, they had located the exact place and exposed the pipe before you were there?

The Witness: Yes. They were in the process of getting to the pipe. [106]

The Court: Enlarging the hole?

The Witness: That is right.

Q. (By Mr. Davis): You don't know whether they ruptured the membrane or not?

(Testimony of Emeron Reynard.)

A. No, sir.

Q. And then they cleared away the membrane so you could look down into the hole? A. Yes.

Q. What did you observe?

A. The pipe was broken at the "T".

Q. Now which end of the "T" was it broken?

A. The run end.

Q. You call it the run end. From what you have told us I assume——

The Court: I would like to have you draw on the board a diagram of it. Just show us how it was broken.

A. Looking at it this would be the north.

The Court: Make north at the top of the board.

The Witness: The break was right here.

The Court: Draw the pipe. Suppose you had a pipe going through there, just draw a picture of it.

The Witness: This would be the run of the pipe going toward the kitchen and this is the run toward the water heater and the pipe was broken off at this point here. This would go toward the kitchen. [107]

The Court: That doesn't help me. I want a "T" where it was broken.

The Witness: The pipe was broken right here. This is the pipe going to the heater.

The Court: And where was it broken? Was it in the threads?

The Witness: Yes, sir.

Q. (By Mr. Davis): And were the two ends of the pipe in opposition?

A. It seems to me that they were slightly out of



(Testimony of Emeron Reynard.)

line—slightly out of alignment. I don't know which way at the moment.

Q. I believe you testified you didn't observe the pipe after it had been cut off. I mean you observed it as you looked down in the hole. You had better sit there so the judge can hear you. You observed the pipe as you looked down through the hole?

A. Yes, sir.

Q. Did you see it after they cut it off?

A. Yes, sir.

Q. And how large a piece did they cut off?

A. I believe it was about six or eight inches.

Q. What did they do? Just cut this piece off here?

A. Cut it off with a hack saw.

Q. And then rethreaded it? A. Yes, sir.

Q. Then you say they put in an expansion joint?

A. Swing joint.

Q. Made a "U"? A. Yes, sir.

Q. So they could get in there and work?

A. Yes, sir.

The Court: You said they put that in there in case there was any future expansion.

The Witness: That was the remark at that time, yes.

The Court: Did you see the end of the pipe when they took it off?

The Witness: Yes, sir.

The Court: What did the end look like? Was it cut right straight across?

The Witness: I am not qualified to say whether



(Testimony of Emeron Reynard.)

it was a shear or a tension break, but it was broken off.

Q. (By Mr. Davis): Was it clean?

A. Not like you would cut it with a saw or anything, no.

Q. But it was—the break was at right angles?

A. Yes, sir.

Q. That is what I am trying to say.

A. Along the angle with the thread.

Q. And there was no jaggedness to it?

A. A slight amount that you would find if a pipe were broken but I don't think there was any undue amount. [109]

The Court: In your experience have you seen broken threads before?

The Witness: I have seen broken threads, yes.

The Court: Did that appear to you to be an ordinary break that you would find in threads?

The Witness: Yes, sir.

The Court: I have a sprinkling system that I have been playing with a long time, so I have learned a lot about these "T's" and breaks. I am just trying to show my knowledge of plumbing by working with a sprinkler system. I am trying to get it to hit all parts of my lawn.

Q. (By Mr. Davis): I believe you said that was the piece they cut off—it was about six or eight inches long?

A. Yes, about six or eight inches long.

Q. Maybe that accounts why nobody ever saw it after that. I had a picture in my mind that it

(Testimony of Emeron Reynard.)

might have been a much larger piece of pipe.

The Court: They had quite a time getting the end out of it.

Mr. Davis: We have subpoenaed the plumber—that is if we can get him. These technicians are mighty ticklish and you have to catch them on the run. I think we will find out more about it when he gets here. I imagine they have instruments to get ends out of the pipe. You should know something about that, too. [110]

The Witness: I have got a chisel just the size of the pipe that I drive in there and put the wrench on it and just twist it out.

Mr. Ekdale: That is not good practice. You should throw it away.

Q. (By Mr. Davis): Now, you were there and I understand that some people came about that time to inspect the hot water tank? A. Yes, sir.

Q. Who were they?

A. Two gentlemen, as I recall. One of them I believe was named Quinn from, I believe it is from the Crane Company in Los Angeles, and I think the other gentleman was Mr. Chosen (phonetic) from the Crane Company in Long Beach. [111]

\* \* \* \* \*

Q. (By Mr. Davis): Did your specifications have anything to do with the specifying of a pressure reducer? A. Yes, sir. [112]

\* \* \* \* \*

Q. (By Mr. Davis): Will that specification in itself indicate the reduction or the amount of

(Testimony of Emeron Reynard.)

pressure?           A. Yes, sir.

Q. Do you know whether or not that reducer pressure valve was installed?           A. I do. [113]

\* \* \* \* \*

Q. But you do know that that regulator was installed there?           A. Yes, sir. [114]

\* \* \* \* \*

### SIMON PERLITER

called as a witness by the plaintiffs, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Simon Perliter.

### Direct Examination

Q. (By Mr. McCarthy): What is your occupation, Mr. Perliter?

A. I am a consulting engineer.

Q. And any specialty in engineering?

A. Yes. My specialty is hydraulic and structural engineering. [121]

\* \* \* \* \*

Q. Now, Mr. Perliter, did you ever inspect the home of Dr. Daniels?

A. Yes. I inspected the home of Dr. Daniels for the first time—sometime prior to March 18, 1950.

Q. And will you tell us what you observed there on that occasion?

A. On the first occasion that I inspected the home I made a rather casual inspection and noticed numerous deformations, particularly at the doorways. I noticed deformation of the floors, the slab throughout the entire house.

(Testimony of Simon Perliter.)

I noticed the heaving of the hardwood floors in the dining room and in the living room.

I noticed numerous plaster cracks throughout the house.

I made also a casual inspection of the outside of the house primarily to see what had happened on the outside.

I also attempted at that time to close some of these doors, which I couldn't. I also walked into the kitchen and I noticed the drainboard—I took a glass of water and poured it at one end of the drainboard and the water flowed toward the wall rather than in the opposite direction, which is common practice in construction of that type.

Q. Then when did you next inspect the property?

A. On the morning of March 18, I believe it was a Saturday, 1950. My partner and I brought an instrument, a level along with a view of running levels throughout the house to determine the amount of deformation that had taken place.

Q. Did you make a drawing showing those various levels? [126]           A. Yes, sir.

Q. Is this the drawing?

A. This is the drawing—this is a print of the original drawing. I have the original in my brief case. This is a print of the original—of the original survey.

Q. And does this truly record the elevations at various points in the house with reference to an arbitrary mark which you used?

(Testimony of Simon Perliter.)

A. Yes, as close as you can run a level survey with a regular surveyor's instrument.

Mr. McCarthy: I offer in evidence this as our next exhibit.

The Court: Any objection?

Mr. Davis: No objection.

The Court: Admitted.

The Clerk: Plaintiffs' Exhibit 2 in evidence.

(The document referred to was marked Plaintiffs' Exhibit 2 and received in evidence.)

Q. (By Mr. McCarthy): Now, Mr. Perliter, does this show the amount of deformation of the various floors in this building?

A. It shows the amount of deformation of the various floors of that building as of March 18, 1950.

\* \* \* \* \* [127]

Mr. Davis: I will concede that his figure to put that place back in good condition from the way it is now would cost approximately his figure.

Mr. McCarthy: Which is \$14,450. [128]

\* \* \* \* \*

The Court: In other words, you are not making any admission of liability but we don't have to spend time now on that element?

Mr. Davis: Not on the dollars and cents.

Q. (By Mr. McCarthy): Now, Mr. Perliter, in the light of your own inspection and observation of this building, and assuming the facts which I will here relate to you, I am going to ask you for your opinion——



(Testimony of Simon Perliter.)

The Court: Has the witness been in court during all the testimony?

Mr. McCarthy: I don't think he heard the first of Dr. Daniels' testimony.

Q. (By Mr. McCarthy): At what stage did you come into the courtroom, Mr. Perliter? [129]

A. I came in when, I believe, Dr. Daniels was just getting on the stand or shortly thereafter.

Q. Then you heard the bulk of his testimony?

A. Yes, I heard the bulk of his testimony.

Q. Well, assuming then the truth of the facts stated in Dr. Daniels' testimony and also your own observation of the building, do you have an opinion as to the time at which this cold water pipe broke?

A. Yes. I would say that it probably broke immediately after the Doctor turned on the hot water faucet in the bathroom.

Q. And will you state your reason for that opinion?

A. Yes. When he opened the hot water tap, as he described, it came out with considerable force and turned into steam. The reason for that is this. I believe most of us have been up in the mountains at some relatively high elevation and you have always found it difficult to boil water or, rather, you found it easy to boil it. It will boil at a lower temperature than it does at the sea shore and that is due to the fact that the higher we go in the air the lower the atmospheric pressure. At the sea shore the atmospheric pressure is 14.7 pounds per square inch



(Testimony of Simon Perliter.)

of surface. There are 14.7 pounds of air pressure bearing down.

The Court: And that is what holds us onto the earth.

The Witness: The force of gravity holds us down to the [130] earth because that pressure is exercised in all directions. If it wasn't you would burst. If you want me to I can tell you a story about that.

The Court: And I can tell you a story also when you get through.

The Witness: When he opened that faucet the pressure inside of the faucet and in the tank was quite high. It had to be high because this heat had been continuously boiling up and the higher the pressure the higher the boiling point. That is one of the basic concepts of physics.

I remember in high school I learned that.

The minute he opened that faucet he released pressure and by releasing pressure that water that was immediately behind the faucet burst out. The pressure was released and it turned into steam.

Now, as I gather from Dr. Daniels that faucet was left open. He didn't shut it. That lowering of the pressure immediately transferred itself all the way through the piping system, the hot water piping system on to the tank. I don't know if your Honor is familiar how a hot water tank is constructed and if you wish I will draw one on the board.

The Court: I want to know how this one was drawn.

(Testimony of Simon Perliter.)

The Witness: This is common practice.

The Court: I am not interested in common practice. Do you know anything about this hot water heater? [131]

The Witness: No, I wasn't inside of it so I couldn't tell you that but the cold water tap of a hot water boiler comes in through the top and goes down to the bottom of the boiler to within about a foot of the bottom.

The hot water tap of a boiler comes out of the top. The reason for that is this. If your cold water line did not go down toward the bottom you would *by* by-passing the heating element at the bottom, so that your cold water would take the least path of resistance and go out the hot water side immediately and they would get the hot water at the bottom and cold water at the top and at the bottom is where the heating element is located.

Now, when this thermostat failed to operate the gas continued to heat this water. The pressure kept building up in this tank and some of that formed into small vapor bubbles and these vapor bubbles found their way both into the hot water line and also partially into the cold water line and when Dr. Daniels opened that faucet and reduced the pressure, that pressure immediately was transmitted upstream from the faucet toward the hot water tank, up through the cold water line and finally found a way of getting out by exploding.

Now, I will explain why that exploded. It is based upon a common concept of what is called "water hammer." Water hammer can occur under various

(Testimony of Simon Perliter.)

conditions. The common concept is when we close a valve very suddenly what you do is you are shutting off the flow of water. You have energy in this water that is traveling in the line and when you close off a valve suddenly that energy has to be released in some manner or form and it is released in the form of a wave. That wave travels at a speed equivalent to four times the speed of sound in air. In water it is equal to 4800 feet per second. Or if you want to convert it into miles per hour, 3,300 miles per hour. That wave travels that fast.

And when that wave travels with that speed it acts as a battering ram and anything that gets in its way will feel the effect of that force and those stresses are theoretically—they are infinite stresses.

I will go a little farther. In large water supply systems where you are pumping from this level up to a tank at a higher level to serve an area at a higher level, we install what is known as control valves. There are various types on the market, depending upon price and their ability to do a job.

A control valve operates in this manner. When we are ready to stop pumping—in other words when the reservoir that we are pumping to reaches a certain level there is a float switch. That float switch sends an impulse through a telephone wire to the control valve and the minute that impulse is received by the control valve it starts to shut the control valve off and not the pump. The control valve starts to close. The pump is still operating. The reason for that is you want [133] the energy that is imparted by the pump to keep that reaction, that

(Testimony of Simon Perliter.)

force that would come back otherwise to balance that force and when these valves are about 85 per cent closed it automatically trips a little lever that shuts off the pump.

The same thing happens when you are starting up a pump. It is to prevent cavitation. The pump is started up first and the valve starts to open up very gradually so that you don't have that full head and all that energy working against the pump and the impellers.

Now in this particular case the steam acted almost in a similar manner. In other words, these vapor bubbles would have gotten into this pipe and when this faucet was opened that force was transmitted through the tank into this pipe, which already had these vapor bubbles, and it acted in a similar manner that I have just explained for water hammer and when it got to this it had to take a right angle turn and no doubt some of you gentlemen have tried to take a right angle turn around the corner with your automobile and if you go too fast you know what the results are.

What happened here is it had to go around that bend. Water being incompressible it couldn't get there—it couldn't go anywhere because the water was compressed so it hit that "T" and from all the descriptions that I have had of the "T" and how it ruptured or rather the description of the cut, [134] it is my conclusion that it was a sheer rupture rather than a tensile rupture.

I might explain that. A "tensile rupture"—if you took a bar in between my hands and if I were strong



(Testimony of Simon Perliter.)

enough to pull that apart what happens is the bar keeps stretching and then at the point of break she necks out and then she snaps, so whenever you see a tensile break you will always notice the necking at that point of rupture. In a sheer break you don't get the necking. It is just a break right across. And analyzing this from the point of mechanics, the forces that might have acted on this thing, I would say that it was a sheer break, especially in light of the description given by Mr.—I don't recall his name——

Q. Reynard.

A. Reynard. Now here is another thing that might be of interest to the court.

Had this break occurred prior to the time Dr. Daniels turned on that faucet, regardless of how much heat had been going into that system, there wouldn't have been any steam coming out of there. There wouldn't have been an explosive violence because that force would have had—there is a force exerted by this heat which would have been relieved in a similar fashion as a relief valve through this cold water tap.

Now, furthermore, based upon Dr. Daniels' explanation [135] of what he saw after he opened up that faucet, he said that there was no more water, hot water, coming out of that nor cold water.

Mr. Davis: I think the witness misunderstood the doctor's testimony.

The Witness: He left that faucet open for a long time. How long I don't know. But I believe that he said that at the end of a few minutes there

(Testimony of Simon Perliter.)

was no more water coming out of that hot water faucet.

What happened, first, part of the water was draining through the faucet and the other part of it went out through the rupture in the pipe. Had the rupture not occurred, had the explosion in that pipe not occurred then water would have flowed through the boiler and back through the hot water system.

\* \* \* \* \*

Q. (By Mr. McCarthy): What, Mr. Perliter, is the weakest point of a pipe which is threaded and turned into a "T" such as the one here involved?

A. The weakest point usually is at the threaded section. Now in the design of rods, brace rods—your Honor probably has seen brace rods in steel buildings, when you compute the stress in a brace rod they compute it at the minimum diameter which is the threaded portion and when you use small rods, and it is economical to use a small rod, you still compute only the stress occurring at the threaded portion.

In large diameter rods such as are used in back stays of suspension bridges they usually up-set those rods. By "up-setting" I mean——

The Court: In other words, what you are trying to tell me that where the threads are is the weakest point of the pipe?

The Witness: Yes.

The Court: It doesn't take an expert to tell us that. That is a matter of common knowledge.

Mr. McCarthy: That is all. \* \* \* \* \*



(Testimony of Simon Perliter.)

### Cross Examination

Q. (By Mr. Davis): Now, in this particular case, from where does that [137] energy come? What is its source? A. Heat.

Q. And, in other words, it was the boiling of the water in the tank that created the pressure that in your opinion broke the pipe?

A. No, not the boiling. The water was not boiling in the boiler. It was under too much pressure to boil.

Q. I mean the steaming or whatever it is.

A. In other words, the way water would normally form inside that tank and in adjoining pipes would be in the form of vapor bubbles. They are the making of the steam and the minute that you reduce the pressure it is these little minute vapor bubbles that break into steam.

Q. Where did this force come from that broke this pipe?

A. It came from, first, the bursting or the turning of the hot water into steam and, secondly, the transmission of that force into the cold pipe—in the cold water pipe, acting as a ram against the incompressible water in the pipe. [138]

\* \* \* \* \*

Q. Now tell us about that pressure relief valve.

A. If I remember correctly, it was a No. 2 Bailey pressure relief valve.

Q. Could you tell what reduction it made in the outside pressure?

A. I believe it reduces it down to about 40

(Testimony of Simon Perliter.)

pounds from whatever the street side of it was—what we call the street side pressures, were.

Q. I don't understand your testimony to be that the street side pressure had anything to do with this result.

A. No, it doesn't. I made a statement that it was reduced from the street side pressure, whatever that was. I have been told that it is about 140 pounds. It was reduced through this pressure reducing valve to approximately 40 pounds. That is a normal working pressure for house service.

Q. That means no greater pressure can get through than 40 pounds, isn't that correct?

A. That is right, provided, of course—when you say "greater pressure," at that particular point the pressure will continue at that 40 pounds under static conditions, but as you open the faucet that pressure reduces considerably by virtue of losses due to friction and due to bends and due to loss through valves.

\* \* \* \* \* [140]

The Court: Then, as I understand your testimony, the break in that pipe was caused by the excessive pressure.

The Witness: A wave of pressure, yes, sir. [143]

\* \* \* \* \*

Q. Eight or 10 or 12? We can determine that from our blueprints anyway. All right, now, as I get your explanation, this water was heated? [148]

A. Yes, sir.

Q. But as long as it was compressed there was no boiling, is that correct?

(Testimony of Simon Perliter.)

A. As long as it was under pressure.

Q. There was no boiling or steaming?

A. That is right.

Q. And what kept it under pressure?

A. Well, the heat kept it under pressure. In other words, the continuous heating.

Q. Kept it under pressure and that was all that kept it under pressure?

A. No, no, there is one other thing that kept it under pressure and that is the pressure of the system—the cold water system.

Q. That is the cold water system, the 45 pounds of cold water coming in there?

A. Whatever it is, 40 or 45 pounds.

Q. That kept the pressure but if the thermostat wasn't working and the water was boiling——

A. The water was not boiling.

Q. I mean the water was heating.

A. Heating.

Q. But because of the pressure it was not boiling or steaming, is that right?      A. That is right.

Q. But it keeps right on expanding, doesn't it?

A. That is right.

Q. Then you say this hot water tap was opened?

A. Well, that is what Dr. Daniels said.

Q. We are assuming that.      A. Yes.

Q. And that and steam and some hot water came out of these two taps?      A. Yes.

Q. They were left open. Now, I am getting to the point where I am confused. Then this energy was created. How and where was it created?

(Testimony of Simon Perliter.)

A. The minute you open that hot water faucet you automatically reduce the pressure in that whole system in there. It was under tremendous pressure. How much, I couldn't say nor can anyone else without having a gauge on the steam gauge. So you immediately release that pressure in that system and when you release that pressure that water turned—that is, a good part of this water turned into steam and the violence that has been described here blew that thing off. [150]

\* \* \* \* \*

Q. (By Mr. Davis): Did Dr. Daniels tell you that he had turned the gas off before he opened the hot water cock?

A. From the testimony here yesterday I understood that he turned the gas off first and then he proceeded into the bathroom and opened up the hot water faucet.

Q. And how long after he opened the hot water faucet, according to your theory, was it before the break occurred?

A. That would almost be immediately after he would open the faucet. The break would occur immediately after that. [166]

\* \* \* \* \*

Q. And is what you have been talking about here—would you describe that as a water hammer?

A. That is commonly known and it is a scientific fact that it is water hammer.

Q. And your water hammer occurs in your larger pipes [168] and where you have great pressures, isn't that a fact?

(Testimony of Simon Perliter.)

A. Well, that is a fact and it is also a fact that it can occur in small pipes. I mean there is no line of demarcation where it might occur. It can occur in small pipes and it can occur in large pipes.

Q. What is the probability of it occurring in a small pipe, a three-quarter inch pipe, as compared to a 12 inch pipe?

A. The occurrence of water hammer in small pipes is just as probable as in large pipes.

Q. But the force, the energy that will be exerted, will be very much less, will it not?

A. That depends where the energy is coming from. The energy that is imparted in a small pipe can be just as much as the energy imparted in a large pipe.

Q. Where does that—in this instance what is your theory as to where that energy came from?

A. In order to answer that question I would like to go back a little bit.

Q. Can't you answer it first and then explain it? Where did that energy come from?

A. Well, I still would like, your Honor, to explain. [169]

\* \* \* \* \*

The Witness: The energy came from the violent explosion of the hot water, the explosion of the steam.

Q. (By Mr. Davis): In the tank?

A. Might have been in the tank, might have been partially in the pipe.

Q. And when you have a force applied—any



(Testimony of Simon Perliter.)

force, but particularly a hydraulic force—the appliance is going to give at its weakest point, isn't it?

A. That is usually the case and that is what I think happened here. The weakest point I figure, based upon the testimony of the doctor, it broke at the "T" and that was the weakest point. [170]

\* \* \* \* \*

Q. But as the energy was being exerted it would go this way, this way, this way and every way, wouldn't it?

A. The energy imparted under water hammer of this type is momentary. It is like an earthquake. It is sudden. [173]

\* \* \* \* \*

The Court: There is an expression used in the insurance policy of "direct loss." What is your explanation of all these deformities that have developed in that place? What [180] caused them?

The Witness: My explanation of these deformities is explained in the manner that after this pipe exploded the system was still under the street pressure so the water just poured out under the foundation and as a result of all of that large amount of water that poured under that foundation it deformed the floor and in the deformation of the floor it deformed other structures immediately above the floor. [181]

\* \* \* \* \*

Q. (By Mr. Davis): Now your conclusion is that this water came from this broken pipe and that is what caused all the damage that you observed there?



(Testimony of Simon Perliter.)

A. All the damage that I observed was caused by the amount of water that poured under the foundation after the explosion occurred.

\* \* \* \* \*

Q. Now, did this—what happened to cause those walls, those bearing walls, to distort? What did the water do to them?

A. I believe that the water that got under the house as a result of this explosion saturated the soil underneath and also it is quite possible that the hydrostatic pressure developed in that area could have done the damage as well. And when this black adobe is saturated it has a tendency to swell and with that large amount of water that was under [187] there it could swell anywhere from 25 to 40 per cent of its original volume. That is one of the characteristics of black adobe. [188]

\* \* \* \* \*

### Redirect Examination

Q. (By Mr. McCarthy): Now on the subject of water hammer, Mr. Perliter. Does water hammer—when water hammer is created is that in excess of ordinary working pressures?

A. Considerably in excess.

Q. And on the subject of a factor of safety for water hammer, is there any reason why a factor of safety has not been set up as far as you know?

A. They don't set up specifically a factor of safety for water hammer. They set up a factor of safety for things that might occur. It might be caused by anything that might occur. They don't

(Testimony of Simon Perliter.)

set it up specifically for water hammer. [197]

Q. Well, what I am getting at is, does water hammer vary according to the manner of its creation? That is, the pressure created by the manner of its creation, the respective pressures involved, and so on.

A. Yes. Water hammer will be of one intensity due to a sudden closing of a valve, and it is another and much greater intensity when steam explodes.

Q. And is the introduction of steam into water one of the well-known and commonly recognized causes of water hammer?

A. When the steam explodes that is what happens.

Q. Am I correct in saying that the introduction of steam into water is one of the commonly recognized causes of water hammer? A. Yes. [198]

\* \* \* \* \*

Q. Now in your opinion, Mr. Perliter, was the break in this pipe caused by internal pressure?

A. That is the only way the break could have occurred, is due to internal pressure. The internal pressure was there and that is what caused the break. [199]

\* \* \* \* \*

Q. Mr. Perliter, is there any example in nature of the formation of steam by reason of the release of pressure upon it?

The Court: I don't understand that question.

Mr. McCarthy: Will you read the question?

(Question read.)

(Testimony of Simon Perliter.)

Q. (By Mr. McCarthy): Upon superheated water?

A. Yes. I think I can illustrate that very well. I don't know if you have ever been up in Yellowstone National Park. I have and you probably have and if you haven't you have all heard of Old Faithful. There is a perfect example of the same thing that happened here.

Now here is the principle of a geyser. You have a long tube and underneath this tube is a big cavern. The cavern has water in it. The heat applied to the water at the bottom is due to the earth's heat which we all know exists. It continues to heat the water and as the temperature rises the [200] pressure rises. That is a common high school lesson in physics. The pressure continues to rise to such an extent—to such a point where the long column from which the geyser discharges, it exceeds that pressure that is holding it down. It is like a cork, and when it exceeds that and the pressure is released, the minute the pressure is released these steam bubbles explode with great violence and then the whole thing just rises up and continues to operate until the whole thing is back in equilibrium and there is a column of water back in this tube and then the heat continues to operate again and you get that thing occurring over and over again. [201]

\* \* \* \* \*

### Recross Examination

The Court: In other words, the water didn't have to come through the water pipe?

The Witness: That is right, but the house is con-

(Testimony of Simon Perliter.)

structed in such a manner that the rain drains away from it. [202]

\* \* \* \* \*

KENNETH S. WING

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Kenneth S. Wing.

Direct Examination

Q. (By Mr. McCarthy): What is your occupation, Mr. Wing? A. Architect.

Q. And how long have you practiced your profession?

A. I have been certificated since 1929 and have practiced since 1930.

Q. And that has been continuous practice?

A. Yes. [203]

\* \* \* \* \*

Q. All right. Now describe the manner in which that—the foundations and the slab floor were constructed. Just what they did.

A. Well, all continuous walls were—both exterior and interior, were poured and then the grade was determined and the crushed rock was placed underneath it and then a building paper was laid over it—not as a membrane—it was not sealed in any manner. We don't wish it to be that way. That wasn't the intention. It was to keep the concrete from becoming part of the rock which was beneath it so it would create a void underneath the floor to



(Testimony of Kenneth S. Wing.)

protect the normal amount of water that might possibly come from normal soil conditions.

Q. All right. Then describe the manner in which the sequence of pouring of concrete into the various parts of the foundation and slab.

A. Well, as I said, the exterior and interior continuous foundations were all poured and then the rock was placed and [207] then the paper placed on top of that and then the slab was poured over everything, which makes for continuity of the building.

Q. Then as to the various walls, both exterior and interior, on what were they placed?

A. Well, they began—there are bolts located so—they are spotted and the plate then is located where they belong, naturally right over the foundation, the bearing foundation.

Q. And does the slab floor extend under the plate?      A. Yes.

Q. So that you have in a sequence going down the plate, part of the slab and then the foundation footings?

A. Yes. I should like to call your attention that there is a cold joint between the foundation and the slab.

Q. By a "cold" joint what do you mean?

A. I mean there is not perfect adhesion. It takes vertical loads but doesn't contemplate any other direction. [208]

\* \* \* \* \*

(Testimony of Kenneth S. Wing.)

Q. Were there any steam boilers or steam pipes in this house at all?

A. Not as such, no. It was water. It is heating by radiation from water circulating—circulating water. [211]

\* \* \* \* \*

Q. That is what I was getting at—any steam that formed in the hot water heater could back up into the cold water line.

A. It could only go to a point because of the fact there is a tremendous pressure coming down from the hill and there is a pressure reduction valve outside of the driveway.

Q. But it could go up to the pressure reduction valve?      A. Yes. [214]

\* \* \* \* \*

Q. (By Mr. McCarthy): Now, on or about December 18, 1949 did you receive a call from Dr. Daniel?      A. Yes, I did.

Q. Regarding his hot water heater?

A. Yes.

Q. Tell us about that. What was done? Was that a telephone call?

A. Yes, it was a telephone call.

\* \* \* \* \*

Q. (By Mr. McCarthy): Did you inspect the Daniels home within a day or two after receiving that telephone call?

A. After the break in the line was completed. I was there after that. I saw the damage done to the



(Testimony of Kenneth S. Wing.)

building and I am familiar with the immediate damage.

Q. You didn't see it up until the time they made the repairs?

A. No. Mr. Reynard went over. He is our superintendent and he immediately went over. [215]

\* \* \* \* \*

Q. Did you observe the damage done to the house?      A. Yes, I did.

Q. Will you describe that?

A. Well, apparently the floor—the most obvious thing of course is the surface and then working back toward the floor, it was distorted and sprung out of shape and the concrete floor in their rumpus or hobby room was considerably arched at that time and the doors did not work indicating a rise at the particular point where the distortion was obvious. Everything so far as the horizontal plane was concerned had apparently risen.

Q. And as to the foundations or fittings, did they appear to have risen?      A. No, they did not.

\* \* \* \* \* [216]

Q. Now following the occurrence of this break in the line, did you have any conversation with Mr. Robert Avery?

A. Following the break of the line?

Q. Yes.

A. Yes, I did, within a very few days after that. I discussed it with him.

Q. And who is Mr. Robert Avery?

A. He is one of the partners—in fact, I dis-

(Testimony of Kenneth S. Wing.)

cussed it with both Hammond and Avery who are the firm of Hammond & Avery Insurance Agents, with whom the Doctor placed the policy.

Q. And who were present when you had this conversation with Mr. Avery?

A. Mr. Hammond and Mr. Avery. [217]

Q. Both of them were there? A. Yes, sir.

Q. And what was said?

Mr. Davis: Again I make my original objection that conversation had with these gentlemen would not be binding upon the company unless the agent's authority has first been shown.

The Court: That is one of the questions we have to settle here.

Mr. McCarthy: Yes, your Honor, that is right.

The Court: It will be admitted subject to objection to strike.

Mr. McCarthy: Thank you, your Honor.

Mr. Davis: Same objection I made yesterday, that your Honor reserved ruling on.

Q. (By Mr. McCarthy): Will you state that conversation?

A. I asked them if their comprehensive clause, as I understood it, would not cover this and they said that they would check and they talked, as I remember it, with the Los Angeles office.

Mr. Davis: I object to that.

The Court: What did they tell you?

The Witness: They said that it did not.

The Court: Did they say they had checked with Los Angeles?

(Testimony of Kenneth S. Wing.)

The Witness: Yes, sir. [218]

Q. (By Mr. McCarthy): Now, did you tell them what happened? A. Oh, yes.

Q. Describe what you told them.

A. Well, I told them that the water line had broken under the building and caused a considerable amount of water to go underneath the building, necessarily swelling the adobe, which is common procedure.

The Court: Did you tell what caused the break in the line?

The Witness: Yes, I told them, which I felt at that time, that it was the thermostat on the water heater. I think that was the beginning point of all of it.

Q. (By Mr. McCarthy): You told them about the failure of the thermostat? A. Yes.

Q. Did you say anything about the formation of steam?

A. No, I did not. I did not get into any technical discussion with them to that extent. I told them the pressure was built up due to the fact that the thermostat didn't release. [219]

\* \* \* \* \*

### HELEN J. DANIELS

called as a witness by the plaintiffs, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Mrs. E. H. Daniels.

The Clerk: What is your first name?

The Witness: Helen J. Daniels. [241]

(Testimony of Helen J. Daniels.)

Direct Examination

Q. (By Mr. McCarthy): Mrs. Daniels, you are one of the plaintiffs in this action? A. I am.

Q. And one of the owners of the house that was damaged by the breaking of this water pipe?

A. Yes.

Q. Mrs. Daniels, will you tell us what occurred on the morning of December 18, 1949 with reference to the overheating of this hot water heater?

A. I was sleeping at the time but I woke up hearing my husband and son out in the kitchen and when I entered the room I saw this steam coming from the faucet.

Q. And then what did you see after that?

A. Well, the steam went away. It just lasted for a few seconds or minutes—just a short time after I reached there.

Q. And did you see whether or not that hot water faucet in the kitchen was closed after the steam had issued from it?

A. We left the faucet open all day.

The Court: Was the water running?

The Witness: No, there was no water in the hot water faucet.

The Court: How about the cold water faucet?

The Witness: There was a very slight amount of water.

Q. (By Mr. McCarthy): That was after the steam had issued out?

A. That was after the steam came, yes.

(Testimony of Helen J. Daniels.)

Q. How long did that reduced volume of cold water out of the cold water faucet continue?

A. It continued until it was repaired.

Q. Now were you there when the faucet in the kitchen was first opened?

A. No, I wasn't there when it was first opened.

Q. You arrived there too late to see that?

A. I arrived—there was a commotion out in the kitchen and I knew something was wrong.

Q. Then did you do anything? Did you observe anything further during that day?

A. No. The only reason I remember it was that we were entertaining the nurses from the hospital that night and having to use water during the day I was drawing from the cold water faucet. That is the reason I remember that. And I got so very little water and it was quite a process to try to entertain 20 nurses. So finally we decided that we would go to the other bathroom and get kettles of hot water which made our preparing for the luncheon a little more simple.

Q. Did you have hot water?

A. Had hot water in the other bathroom which is heated [243] in another hot water heater.

Q. Now at any particular time during that day, after you observed steam issuing from the hot water faucet, did you notice water appeared to be running in the house?

A. We did. When we went to bed at night—of course we were busy preparing for this dinner during the day.



(Testimony of Helen J. Daniels.)

Q. And you paid no attention to it?

A. Paid no attention but at night when the house was quiet it did sound like there was water running some place.

Q. Now on the next day what if anything happened?

A. Nothing particular happened. The plumber hadn't arrived by the time I left the house. I left the house early in the morning to help my neighbor prepare a luncheon and I was gone all day.

Q. And when you returned was the plumber there?

A. No, the plumber had left.

Q. Then the following day, Tuesday, tell us what occurred?

A. Well, the plumber came in the morning some time and I didn't pay much attention to what was happening because the plumber had called and it was his responsibility. I thought he would just repair it and everything was all right, and he did, but of course at that time we didn't realize the extent of the damage.

Q. Now on that—on Tuesday who all do you remember was [244] in the house in connection with this?

A. I can't remember everybody. There seemed to be a lot around there. There were probably six men.

Q. And did you observe what was done in the way of making repairs?

A. I knew what they were doing. They were



(Testimony of Helen J. Daniels.)

working in Richard's room. I had to awaken him so they could go into that room.

Q. Did you see the nature of the repairs that were being made?

A. No, I wasn't paying any attention.

Q. Did you see the nature of the break?

A. No, I did not.

The Court: You didn't pay any attention when they were cutting a hole through your floor?

The Witness: There were about a half dozen men there. Mr. Quinn, I believe, was one of them, and several plumbers and there really wasn't room for me.

Q. (Mr. McCarthy): You didn't like the idea of the break?

A. I didn't like the idea. There was cement splashing all over the bedroom and there wasn't very much room for me.

Q. Well then, when did you first observe any deformation of either the floors or the walls of this house?

A. Well, I would say by Monday evening, the following [245] day, that we began to notice this, first in the hardwood floors. They began to buckle slightly.

Q. Did you see any steam in the vicinity of those?

A. Just where the hardwood floors and the radiant heat was. We left the radiant heat on all the time.

Q. And just tell us what you saw there.

(Testimony of Helen J. Daniels.)

A. Well,—you mean on the following day—what the damage was?

Q. Yes. Just describe the damage.

A. As the boards began to buckle up—it was so uncanny that we didn't—we were startled—that is all. That is one of those things we had never seen or heard of having happened. This plate glass window and the radiant heating made the boards damp and covered the front window with steam—it was completely covered with steam, but they tore up the boards to relieve that so there would be circulation and it would dry out quicker, but we could touch the cement after the boards were torn up and it was damp.

Q. Then how long a period of time did it take for all of the damage to occur?

A. Well, I would say the worst damage was probably on Tuesday and Wednesday because I recall standing in the living room and we could hear loud cracks. Mr. Best was standing there and I was—I don't recall if Mr. Quinn was there or not, but several men were there and we heard this crack and [246] saw the wall open up and then about—during that week the kitchen ceiling cracked. Those are the prominent cracks. And then in the bedroom you could see as it extended toward the further end of the house. It began to develop. And in that further bathroom the walls are badly cracked and the dressing rooms where the door jambs are out of shape and the cracks are all still there.

(Testimony of Helen J. Daniels.)

Q. Did you observe any damage in the hobby room?

A. Yes. That was very high in the center and of course—that hasn't been repaired and you have to be very careful how you put a table there or it will be tilted.

Q. How large is the hobby room?

A. Approximately 30 by 33 or something like that.

Q. That is the largest room in the house?

A. That is the largest room in the house.

Q. And how long did it take for all of this to occur? When was the damage apparently all done?

A. Well, I feel like it was all done that first week. It was right at the holidays and I know it was very disturbing. [247]

\* \* \* \* \*

### Cross Examination

Q. (By Mr. Davis): And on Sunday evening you had how many guests?

A. We had 20 surgery nurses from the Seaside Hospital.

\* \* \* \* \*

Q. And you washed your dishes?

A. Yes. We couldn't use—we couldn't use any of the dishwashers or anything of that kind after that. We didn't have any hot water.

Q. And the night before——

A. Everything was normal. [248]

\* \* \* \* \*

**ROY O. ELMORE**

called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Roy O. Elmore.

**Direct Examination**

Q. (By Mr. Davis): And what is your occupation, Mr. Elmore?

A. Resident manager of the Hartford Fire Insurance Company, Southern California Department.

Q. And as such are all losses and underwriting under your control? A. Yes.

Q. Jurisdiction? A. Yes.

Q. Are all losses reported to your office?

A. They are all reported to our office.

Q. When was the first time that the loss that is the subject of this lawsuit was reported to your office? A. April 19, 1950.

Q. And how was it reported?

A. It was reported by our agent, Hammond & Avery of Long Beach to our claims department.

Q. And on that report what did you do? Did you advise them you would do anything? [263]

A. Well, the way it occurred, Mr. — one of the partners called our claims department and asked that some papers be sent to Attorney McCarthy of Long Beach, and not knowing what those papers were about, since this was the first time we heard of the claim, I called Mr. Hammond and asked him what this was all about because with this reported claim we saw no reason to send any papers to an

(Testimony of Roy O. Elmore.)

attorney until we had time to investigate the claim.

Q. You so told him?

A. I so told Mr. Hammond.

Q. And did you cause an investigation to be made thereafter?

A. We assigned the claim immediately to the general adjustment bureau at Long Beach.

Q. And thereafter got a report from them?

A. Several days later we got a report from the adjuster that there was severe damage at this location.

Q. And then did you—what did you do then?

A. Asked him to proceed with very definite investigation, as far as he could go, and report back to us.

Q. And then did you employ anybody else to make a more detailed investigation?

A. After the general adjustment bureau had gone to a certain extent, feeling that we should have further expert testimony or expert investigation and engineer's reports, we [264] assigned Mr. John I. Shield, consulting engineer, to make further investigations.

Mr. Davis: I think that is all.

#### Cross Examination

Q. (By Mr. McCarthy): Mr. Shield was given full access to the Daniels premises, was he not?

A. We merely assigned it to him and told him to make whatever investigation he felt was necessary and whatever he did, of course, was on his own initiative as consulting engineer.



(Testimony of Roy O. Elmore.)

Q. Did he report to you that he was not given full access to the premises?

A. No; I don't think that he reported to us that he wasn't given full access. I did not consult with him very much until he returned his report, so I just accepted his report as returned.

\* \* \* \* \*

### JOHN E. SHIELD

called as a witness by the defendant, being first sworn, was examined and testified as follows: [265]

\* \* \* \* \*

The Witness: John E. Shield.

### Direct Examination

Q. (By Mr. Davis): What is your business or occupation, Mr. Shield?

A. I am consulting structural engineer. [266]

\* \* \* \* \*

Q. And are you familiar with the general soil conditions in the Palos Verdes hills?

A. Yes, sir.

Q. Did you have occasion to go to the residence of Dr. [267] Daniels, Dr. and Mrs. Daniels?

A. I did, sir.

Q. Do you recall when that was?

A. On May 18, 1950.

Q. And at whose request did you go?

A. The request of Mr. Elmore.

Q. And how many times did you go on those premises?



(Testimony of John E. Shield.)

A. Twice, I believe. I went once and no one was home and so I immediately left.

Q. And then you went again?

A. Yes, sir.

Q. How soon after?

A. Well, three or four days after the first visit.

Q. And was anybody with you the second time?

A. I had two laborers with me.

Q. Did you see anybody at the premises?

A. I saw Mrs. Daniels.

Q. And what happened? Did she show you the place?

A. Yes, Mrs. Daniels showed me through the house completely. [268]

\* \* \* \* \*

Q. Then you went back at a later occasion? [275]

A. Yes, sir.

Q. And with whom did you go that time?

A. I took with me Mr. Fred W. Rohe, a mechanical engineer.

Q. And by the way, did you interview anybody else who knew or purported to know anything about this condition other than Mrs. Daniels?

A. When?

Q. At the occasion of your first visit?

A. No.

Q. Later did you make any investigation by making inquiries of others? A. Yes.

Q. Who did you inquire from?

A. Inquired from Mr. Ward of the plumbing company, Mr. Coleman of the plumbing company,

(Testimony of John E. Shield.)

Mr. Reilley of the General Adjustment Bureau, Mr. Wing and Mr. Reynard.

Q. Were you given a copy of the plans and specifications by anyone?

A. Mr. Reilley gave me a copy of the plan.

Q. Do you know where he had gotten them?

A. I do not know.

Q. Those were copies of the plans that are before you now?      A. Yes, sir. [276]

Q. Now, on the occasion of your second visit there or third—the second that you made any observations, was anybody with you besides Mr. Rohe?

A. No, sir. Well, Mrs. Daniels was there. She showed us through the house.

Q. Did she show you substantially the same thing as she had shown you the first time?

A. Yes; gave us complete access to the house.

Q. And did Mr. Rohe in your presence make an examination of any of the premises?

A. Yes; he made an examination of the water heater, the thermostat. Took the serial numbers of the various pieces of equipment and the names of the manufacturers and so on.

Q. Now based upon the information which you had and the observations you made at that time, and assuming that the water pipe had broken—I am not going to recite it, you have heard the testimony here, but at the place pointed out to you by Mrs. Daniels, did you come to any conclusions as to what caused that water pipe to burst?      A. I did.

Q. Or break?      A. I did.

(Testimony of John E. Shield.)

Q. What conclusions did you come to?

A. I came to the conclusion that the heavy rains which had fallen at that time caused the adobe to swell and caused [277] distortion in the house sufficient to cause the breakage of the pipe. [278]

\* \* \* \* \*

### Cross Examination

Q. (By Mr. McCarthy): Now how much rain had fallen within the week prior to December 18, 1949?

A. The only source of factual information for that is the United States Weather Bureau.

Q. You inquired, did you?

A. The Weather Bureau has two stations, one at Torrance and one at San Pedro. The location here is somewhat between those stations.

I did not inquire as to the amount of rain that had occurred immediately prior to the 18th, but on the 18th the figures were, I believe, 1.18 inches in Torrance and 1.66 inches in San Pedro.

Q. What was your figure for Torrance?

A. 1.18.

Q. And that was for the 18th? [279]

A. That is the way I got it from the Weather Bureau.

Q. Did you make any investigation as to what the rainfall had been at any prior time?

A. Yes.

Q. What did you find?

A. I found that there was some rainfall on November 9.

Q. And what was the amount?

(Testimony of John E. Shield.)

The Court: Hadn't been any between November 9 and December 18?

The Witness: Yes, there had been.

The Court: Just traces of rain or a substantial amount? We haven't been getting much rain around this country for the last six years.

The Witness: Yes, I rechecked with the Weather Bureau as to other times after my subsequent inquiry, and I found that they had also received reports from the Palos Verdes Water Company, which was closer to the source than their station.

Q. (By Mr. McCarthy): Did you rely on those reports in arriving at your opinion? A. Yes.

Q. What were those reports?

A. That on November 9 there had been over an inch of rain reported by the Palos Verdes Water Company and that for some three or four days an aggregate of probably less than an inch had fallen prior to December 18th. I don't [280] remember the figures.

Q. Did you obtain any data as to the rate at which this rainfall came down on December 18th?

A. It is only reported on a 24-hour basis.

Q. So that the data you got was somewhere between 1.18 inches and 1.66 inches in a 24-hour period? A. Yes.

\* \* \* \* \*

Q. Inviting your attention to the floor plan here, sheet No. 3 of Exhibit 1, the area which I indicate here is a driveway, is it not? A. Correct.

Q. And along the westerly side of the house



(Testimony of John E. Shield.)

there are flower beds?      A. That is correct.

Q. And the driveway goes right on through alongside them?      A. Yes.

Q. And then to the west of the driveway when you inspected it, there was a retaining wall?

A. That is correct.

Q. And it was to the west of the retaining wall that you dug two of your holes?

A. That is correct.

Q. What is the material of the driveway?

A. Asphaltic concrete, as I recall it.

Q. It was a relatively impervious material, was it not?      A. Yes.

Q. Then did you observe the slope of that driveway?      A. It was fairly level.

Q. Did it have any slope?

A. I did not put an instrument on it.

Q. Did you take any—make any observations to determine whether or not water falling in the vicinity of the house would flow toward the house or away from the house?

A. Since the hill came up like this from the west side of the house obviously water would have flowed toward the house.

Q. Still you didn't answer my question. Would you read the question, please?

(Question read.) [282]

Q. Will you indicate what you mean by your answer?

A. What do you mean by vicinity?

Q. Well, let us say the west side of the house.



(Testimony of John E. Shield.)

A. How far west?

Q. As far west as where you saw the retaining wall.

A. There must have been some drainage provided for the driveway.

Q. Did you observe whether there was?

A. No, I didn't.

Q. Did you observe that the driveway from a point about opposite the dining room to the south-end of the house slopes to the south?

A. That would be the natural way to put it in.

Q. Well, did you observe it? A. No.

Q. Did you observe that the driveway also sloped away from the house, sloped to the west going down? A. No. [283]

\* \* \* \* \*

The Court: As I understand from this witness, you got complete cooperation from the Daniels?

The Witness: That is correct.

\* \* \* \* \*

Q. All right. Now you have given the opinion that the heavy rains swelled the adobe and distorted the foundations of the house? A. Yes.

Q. What part of the foundations of the house were, in your opinion, distorted?

A. I think——

Q. By these heavy rains.

A. All the exterior foundations.

Q. The entire house? A. Yes, sir.

The Court: Were there any cracks in the concrete that you observed?

(Testimony of John E. Shield.)

The Witness: I couldn't observe any, your Honor.

Q. (By Mr. McCarthy): Did you inspect to see if there were any?

A. I know the characteristics of adobe, Mr. McCarthy, [285] and always when it is wet it swells.

Q. Very well. My question is did you inspect any of the foundations of the house to see if there were any cracks in it?

A. Only at that one point I mentioned there.

Q. That indicates S-5?           A. Yes.

Q. And did you find any cracks there?

A. I did not.

Q. And as I understand it that is the only—S-5 is the only point on the entire foundation of this house that you even inspected for cracks?

A. I did not make the inspection for cracks. I made the inspection to determine the depth of the foundation walls.

Q. All right. Now you say that all of the foundations in this house, in your opinion, rose because of these heavy rains?

A. All the exterior foundations? I should say, yes. Whether it was a measurable amount or not I wouldn't say.

Q. Well, now, by "a measurable amount" what do you mean? Ten thousandths of an inch or what?

A. Depends on how you try to measure it.

The Court: Well, gentlemen, you are arguing about something that isn't helping me at all. You

(Testimony of John E. Shield.)

are going into details. You are arguing with an expert. [286]

He told me what he based his opinion on and I want to ask him a few questions.

Did you know when you made your inspection that the thermostat on the hot water heater had failed to work and they heard a noise from the heater?

The Witness: Yes, sir.

The Court: And when they turned on the water that steam came out?

The Witness: Yes, sir.

The Court: And for a short time water?

The Witness: I didn't go into the details. Mrs. Daniels did explain that for me, yes, sir.

The Court: And you had that information before you?

The Witness: Yes, sir.

The Court: And you didn't give any consideration—you disregarded that entirely in coming to your opinion as to the cause of the damage?

The Witness: My opinion was given only after the mechanical equipment and conditions of the mechanical equipment had been inspected by the mechanical engineer with whom I associated.

The Court: But your conclusion was that it was water under the house that caused the damage?

The Witness: There is no doubt that water under the house caused the damage. [287]

The Court: And it is just a question as to that. You think it came from rainfall while the plaintiff contends it came from the break in the water pipe.

(Testimony of John E. Shield.)

The Witness: I should say would be the essential difference.

The Court: Do you think the break in the water pipe had any effect on the condition of that house after running for two or three days?

The Witness: Oh, yes. The break probably leaked water at the rate of five to 10 gallons a minute. There could be in the order of four or five hundred gallons an hour.

The Court: How many days before it was repaired?

Mr. McCarthy: About two days—between 7:00 o'clock on the morning of the 18th until the Doctor had it shut off for a short time—safely 25 to 30 hours or something of that kind.

The Court: Would that have any effect on the foundation, that amount of water over a period of 25 hours?

The Witness: Surely. During the time that it was broken and running at this point the water undoubtedly permeated to all other parts of the house causing the damage that is now observable.

The Court: That is what?

The Witness: That is now observable.

Mr. McCarthy: Was your Honor finished? [288]

The Court: I don't care to hear any more cross examination unless you want to go ahead with it.

\* \* \* \* \* [289]

## JOHN WARD

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: John Ward.

## Direct Examination

Q. (By Mr. Davis): Mr. Ward, what is your business or profession?

A. I am in the plumbing and heating and construction business. [311]

\* \* \* \* \*

Q. And did you have the plumbing contract for this house of Mr. Daniels?

A. Ward and Kincannon Plumbing Company had it.

Q. And that plumbing was in—the plumbing that was in that house was done directly under your supervision?

A. Yes, sir. [312]

## Cross Examination

Q. Now, the thread that is cut by the kind of tools that you used on this job is a sharp “V,” is it not?

A. Yes.

Q. So that each groove of the thread ends in a very [345] small area?

A. That is right.

Q. Do you know whether or not the bottom of the thread of a pipe such as this, that the “V” is the weakest point in that pipe?

A. I would say the thread is the weakest point of a pipe.

The Court: The weakest point is where the



(Testimony of John Ward.)

thread and the "T" come together—on the outside where this pipe broke?

The Witness: Yes, sir.

The Court: That is the weakest point?

The Witness: Yes, that is the weakest point of a section of pipe. [347]

\* \* \* \* \*

Q. (By Mr. McCarthy): *No*, Mr. Ward, have you ever had any experience with water hammer?

A. Yes.

Q. And what is water hammer?

A. Water hammer—I may not be able to give the technical definition of water hammer, but I can give you the general idea of water hammer.

Water doesn't compress, or it is not noticeably able to compress, so when water is rushing down a pipe and you turn a faucet off, well, the water is suddenly stopped and if there isn't some sort of cushion to receive that shock, why, you are very apt to have water hammer. It is a noise that I am sure most everyone is familiar with.

Q. And do you know anything about the magnitude of the pressures that are developed by water hammer?

A. Well, I know that water hammer can cause an awful lot of damage and cause an awful lot of pressure. [350]

Q. Sufficient to break pipes and other fittings?

A. Well, I would say I never have had any experience with water hammer breaking any pipe but I am sure that it could.

\* \* \* \* \*

(Testimony of John Ward.)

Q. (By Mr. McCarthy): Now, do you know how water hammer can be caused?

\* \* \* \* \*

The Witness: Well, of course, to have water hammer you would have to have an absence of any cushion and if you have the absence of this cushion and a sudden force of water can be caused in any pipe—anytime you have water rushing down to one end of the pipe and you turn the water off at the end of a long run of pipe—you have a lavatory way off upstairs, say in an apartment house, for instance, a toilet way up in front of the apartment house, and the farthest point of the house is usually where you have water hammer because you have the water rushing down to that end of the house and you shut the faucet off and shee will rattle. [351]

\* \* \* \* \*

### ROBERT AVERY

called as a witness by the plaintiffs, being first sworn, was examined and testified as follows: [360]

\* \* \* \*

#### Direct Examination

Q. (By Mr. McCarthy): What is your occupation, Mr. Avery?           A. Insurance agent.

Q. And you are agent for the Hartford Fire Insurance Company?           A. Yes.

Q. Now, where is your place of business?

A. No. 30 Linden in Long Beach.

Q. And are you acquainted with Dr. Daniels, the plaintiff in this case?           A. Yes.

Q. And with Kenneth Wing, the architect?

(Testimony of Robert Avery.)

A. Yes.

Q. Mr. Wing's offices are adjacent to yours, in the same building?

A. They are upstairs in the same building.

Q. Now, inviting your attention to a date within a few days after December 18, 1949, did you have a conversation with Mr. Kenneth Wing regarding the Daniels' house?

A. Yes, I did.

Q. And who were present?

A. I think I was the only one present at that time.

Q. And what was said?

Mr. Davis: Of course I am making the same objection as I [361] did before.

The Court: Same ruling.

The Witness: Mr. Wing told me of the damage caused to Dr. Daniels' house as a result of failure of some of the plumbing, resulting in water damage.

Q. (By Mr. McCarthy): Now, just what did he tell you? Did he say any more than that?

A. Well, he said that he thought that it was a condition in the thermostat at that time as I remember it.

Q. And what did he say about the thermostat?

A. Well, as I recall the conversation he said that the thermostat had apparently given way to pressure and broken, permitting the water to seep in and under the house.

Q. And what else was said in that conversation?

A. The conversation was largely as to the extent of the damage to the house and some query on his

(Testimony of Robert Avery.)

part as to whether Dr. Daniels' fire insurance policy would cover the damage.

Q. Now, were you familiar with Dr. Daniels' fire insurance policy?      A. Yes.

Q. And what was your reply?

A. The reply was that he did not have coverage for water damage.

Q. And was anything further said about it?

A. No, I don't believe so. [362]

Q. Now, did you make any report to anyone connected with the Hartford Fire Insurance Company regarding this matter?

A. Not directly at that particular time. At a later date, oh, within two weeks it was discussed rather thoroughly with John Kilgore, who was a special agent for the Hartford Fire Insurance Company and it was also discussed at some length with Russell Thomas, who was an adjuster for the Hartford Accident and Indemnity Company and also with Mr. Frank Homer, who was a special agent for the Hartford Accident and Indemnity Company.

Q. Now, did you at or about the same date have any conversation with Dr. Daniels?

A. Yes. Dr. Daniels called me on the phone to inquire if he had coverage for water damage and started to tell me of the extent of the damage, and I told him that I had already discussed it quite thoroughly with Kenneth Wing, the architect, and I gave him the same answer, that he did not have coverage for water damage.

Mr. McCarthy: You may cross examine.



(Testimony of Robert Avery.)

Cross Examination

Q. (By Mr. Davis): When was that that Dr. Daniels called you?

A. As I recall it was the 21st of December. The reason that date fixes itself in my memory was because my mother's [363] brother passed away on that date in Missouri.

Q. Are you and Mr. Wing—you and Mr. Wing are engaged in some enterprises together?

A. The only enterprise we are engaged in is that Mr. Wing and myself and Mr. Hammond each own a third interest in the building in which we are located.

Q. Dr. Daniels is not interested with you?

A. No, sir.

Q. You are a friend of Dr. Daniels?

A. Yes, sir.

Q. And have been procuring his insurance for him over a period of time?

A. That is right.

Mr. Davis: I think that is all, Mr. Avery.

The Court: Just a moment. I believe the architect said something about you having made some inquiry over the telephone as to whether this was covered. Do you recall anything about that? Did you check with somebody to find out whether he was covered or not?

The Witness: I don't believe that I did, sir. The question that Dr. Daniels and Mr. Wing asked us at the time as whether or not the policy covered water damage and it definitely does not as water damage.

The Court: Did he tell you in substance—well, he



(Testimony of Robert Avery.)

told you in substance and effect the break in the pipe was caused [364] by the excessive heat from the water heater?

The Witness: That is right.

The Court: But nevertheless you gave him that answer and you knew that he was claiming it was a break which came as a result of the thermostat failing to work and not the hot water heater itself?

The Witness: That is right.

The Court: That is, you had that information?

The Witness: That is right.

The Court: That is all.

Q. (By Mr. Davis): As I understood, you got the impression from Mr. Wing that the thermostat had failed and the water had leaked under the house?      A. That is correct.

Q. You didn't have any knowledge that there was a break of the pipe under the house?

A. No, sir.

Q. At that time?      A. No, sir.

The Court: Another question. Afterwards did you call Mr. Daniels' attention to the fact that he may have been covered by the policy?

The Witness: Yes, we did. We subscribed to a service called the "F. C. & S. Bulletins" which provide us with monthly written reports of the changes in various types of [365] insurance and also gives resumes of cases which have been decided on court points, and in the April issue of that service was a resume of a case which was very similar to Dr. Daniels' case and when we had read that and dis-

(Testimony of Robert Avery.)

cussed it we called Dr. Daniels and told him of the circumstances and suggested that he should file a claim as a result of that.

The Court: And did he file a claim?

The Witness: That is correct.

The Court: That is all.

Q. (By Mr. Davis): It was after that that he notified the Hartford Fire Insurance Company of the claim? A. That is right.

The Court: Are you what is called a general insurance agent?

The Witness: Yes, sir.

The Court: Representing many fire insurance companies?

The Witness: Yes, sir.

Mr. McCarthy: One further question.

#### Redirect Examination

Q. (By Mr. McCarthy): As a part of your duty has the Hartford Fire Insurance Company instructed you to report to it any claims of which you acquire knowledge? A. Yes, sir.

Q. And do you sign policies as agent for the Hartford [366] Fire Insurance Company?

Mr. Davis: I think I will object to that.

The Court: That has been admitted.

Mr. Davis: It is admitted first of all that he signed this particular policy.

Mr. McCarthy: I think he did sign this particular policy.

Mr. Davis: Yes, I admitted that in the pleadings and admitted it yesterday.

(Testimony of Robert Avery.)

Mr. McCarthy: That is probably an unnecessary question. That is all.

Mr. Davis: That is all.

The Court: You may go back to Long Beach and sell some more insurance.

The Witness: Thank you.

The Court: Call your next witness.

Mr. Davis: I will call Mr. Coleman.

### FOSTER COLEMAN

called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Foster Coleman.

### Direct Examination

Q. (By Mr. Davis): Mr. Coleman, what is your business, trade or profession? [367]

A. I am a plumber by trade.

\* \* \* \* \*

Q. And as such did you do any work on the Daniels—in the course of your employment do any work on the Daniels property?

A. Yes, I installed the plumbing there. [368]

\* \* \* \* \*

Q. Now, did you install the pressure reducer?

A. Yes.

Q. And do you recall what that pressure reducer was reduced to?

A. 45 pounds. [372]

\* \* \* \* \*

Q. Now will you describe this T break?

A. Well, the break was in the last engaged thread in the fitting. [384]

\* \* \* \* \*

ROBERT E. QUINN

called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Robert E. Quinn.

Direct Examination

Q. (By Mr. Davis): I understand, Mr. Quinn, that you are a special representative for Bastian-Morley Co.?

A. District sales representative.

Q. And Bastian-Morley Co. manufacture these tanks for Crane Co.?

A. Yes, sir. [389]

\* \* \* \* \*

Cross Examination

The Court: Did you say that tank showed evidence of extreme heat?

The Witness: Well, from the exterior it looked like it had had heat on it, yes, sir. [395]

\* \* \* \* \*

PAUL E. JEFFERS

called as a witness by the defendant, being first sworn, was examined and testified as follows: [396]

\* \* \* \* \*

Cross Examination

Q. (By Mr. McCarthy): Would you say, Mr. Jeffers, that it was impossible that water hammer was the cause of the break of this pipe?

A. I would say improbable.

(Testimony of Paul E. Jeffers.)

Q. You wouldn't say it was impossible?

A. No. [410]

\* \* \* \* \*

Q. Now, you spoke of the possible differential movement of the building as a possible cause of the break in this line. Did you observe any evidence of that?

A. I didn't even see the building.

Q. You haven't seen the building at all?

A. No. [411]

\* \* \* \* \*

Q. Doctor—Mr. Jeffers, what is the temperature of water at atmospheric pressure under standard conditions, at sea level? Is it 212 degrees?

Mr. Davis: Boiling point. [416]

The Witness: Yes, it boils at 212 degrees.

Q. (By Mr. McCarthy): But if that is placed in a confined system the boiling point of water is increased as the pressure is increased?

A. That is correct.

Q. Do you know what the temperature of water—what the boiling point of water is under 45 pounds pressure?

A. No, I can't say definitely.

Q. Is it about 292 degrees Fahrenheit?

A. I would say that is probably a reasonable figure. I can't recall the figures without referring to a table.

Q. Do you have a table?

A. No, I haven't but I would say probably that is correct.

Q. Now in order to boil water in this water heater it was necessary to raise the temperature of



(Testimony of Paul E. Jeffers.)

that water to approximately 290 degrees, was it not?

A. That is right.

Q. Because it had a head of 45 pounds of water pressure on it? A. Right.

Q. Now, what is the effect of suddenly releasing the pressure on unvaporized water which has in an enclosed container attained a temperature of 292 degrees?

A. If you got a very sudden release, why, you would [417] probably get a very sudden generation of steam.

Q. It would just flash into steam, would it not?

A. Very rapidly.

Q. And would any energy be dissipated in that manner?

A. Well, you couldn't increase the pressure any.

Q. No, but you would get kinetic energy, would you not? A. (No answer.)

Q. What I am getting at is when water flashes into steam it expands?

A. Yes, that is true but there again you see the minute that you build up your 45 pounds pressure it would cease.

Q. The pressure would cease?

A. No, the generation of steam would cease.

Q. The generation of steam would cease, yes, that is quite true, but kinetic energy would be developed by the flashing of water into steam under those circumstances?

A. You develop a potential energy there. I am not so sure about the kinetic energy.

(Testimony of Paul E. Jeffers.)

Q. You are unwilling to give an opinion on that?

A. Yes, I wouldn't want to say offhand.

Q. Now, coming to this matter of water hammer. Water hammer is actually caused by the movement of water, is it not?

A. Caused by the stoppage of the movement of water.

Q. The water must be placed in motion in some manner, [418] however?

A. Before you can have it, yes.

Q. And can it be caused by a sudden pressure being put on the water as from a pump that has started up too quickly?

A. Yes; if your pump has no expansion chamber.

Q. What I am getting at is you can get water hammer by the addition of energy as well as by the subtraction of it?

A. That is right.

Q. And it doesn't make much difference how that energy is added, whether by a pump or any other way that tends to place that water in motion?

A. Well, if you could start a pump fast enough you wouldn't have to place the water in motion.

Q. You would get your water hammer?

A. You would have it just the same.

Q. Anything that—

A. Would give you a sudden load on the water would give you the effect of water hammer.

Q. Now, water hammer is a rather common phenomena, is it not? That is, it is encountered in steamship boilers?

A. And you find it under certain conditions, yes.

(Testimony of Paul E. Jeffers.)

Q. And what are the causes of water hammer—how can it be created?

A. Water hammer per se is merely the effect of absorbing the kinetic energy in a flowing stream of water and absorbing [419] it suddenly.

Q. That is right, and anything that will cause that sudden addition of kinetic energy can cause water hammer?

A. The result is the same, yes.

Q. Now, is there any way to measure the exact intensity of water hammer?

A. Yes. It could be computed if you knew just exactly the period of time that was involved in the addition or the introduction of the shut-off.

Q. And water hammer in effect produces a sudden very large increase in pressures momentarily?

A. That is right [420]

\* \* \* \* \*

Q. Now, water pressure acts in all directions, does it not?      A. That is right.

Q. And so that if the break here occurred from internal pressure you would have pressure exerted in that direction?      A. Yes, sir.

Q. And that direction and that direction?

A. Yes.

Q. Up and down and all the way around?

A. That is right.

Q. Now, if the pressure was exerted in this direction, that would be transmitted by the speed of sound in water?

(Testimony of Paul E. Jeffers.)

A. Just a moment. Your pressures are static—they are not transmitted.

Q. Let us say we had water hammer.

A. Okay.

Q. That water hammer occurred—that would have created an instantaneous pressure in the system, would it not?      A. That is right.

Q. And that pressure would have operated in all directions? [421]      A. That is right.

Q. So it would have traveled at the speed of sound in water, would it not?

A. That is right, yes. [422]

\* \* \* \* \*

#### Redirect Examination

Q. (By Mr. Davis): Water hammer and breakage from water hammer would be accompanied by a loud noise, wouldn't it?      A. Yes, sir.

\* \* \* \* \*

#### JEROME PINKUS

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows: [424]

\* \* \* \* \*

A. I am a mechanical engineer.

Q. What was your education?

A. I graduated from, with a B. S. from the Armour Institute of Technology in Chicago.

Q. When was that?      A. 1934.

Q. And following your graduation did you do any research work?

A. I entered the employ of Crane Company in their research and development laboratories. [425]

(Testimony of Jerome Pinkus.)

\* \* \* \* \*

The Court: In the first place, ask him if he is familiar with the water hammer problem.

The Witness: Yes, I am familiar with water hammer problems. We made quite a study of it at Crane Company and particularly because we manufactured valves and in hydraulics or water flow of any kind, why, there have been lots of questions on water hammer and there has been a lot of investigation, not only by Crane Company but others on the subject of water hammer.

Q. (By Mr. Davis): That was in the line of your research during your time there?

A. Yes. I worked on it at one time or another.  
[434]

\* \* \* \* \*

### Cross Examination

Q. (By Mr. McCarthy): You have done a good deal of research on the subject of water hammer, is that correct?      A. I have done some, yes.

Q. And in that research you attempted to create water hammer?      A. That is right.

Q. And you create it with the greatest possible intensity and to destroy valves, fittings and other things by water hammer?

A. That is right, sir.

Q. Did you ever succeed in destroying anything with water hammer?

A. Yes, we did with cast-iron equipment.

Q. And what was the largest item of equipment that you succeeded in destroying with it?

A. At the time of our investigation we went up



(Testimony of Jerome Pinkus.)

to about 6 or 8 inch diameter pipe and valves.

Q. And you worked only on cast-iron valves?

A. No. We did steel valves but we found that the steel did not have the tendency to break like the cast-iron.

Q. Of course your steel valves are made of chrome steel or molybdenum steel?

A. Not always—just plain carbon steel valves, too. [438]

Q. What was the largest valve you succeeded in breaking?

A. Well, I don't recall exactly, but they were around the order of 10 and 12 inch diameter valves.

Q. And a 10 or 12 inch diameter valve stands about that high?      A. That is right.

Q. Five or six feet high?

A. That is right, yes. [439]

\* \* \* \* \*

Q. (By Mr. McCarthy): Now did you do any, in your research on the subject of water hammer, did you do any research on the creation of water hammer by the introduction of steam into water? [441]

A. No. We did our work with water flow—a flow of cold water.

Q. That is, you just closed a valve suddenly?

A. But we did do work of injecting high pressure steam in the pipelines to see what happens to flanges in the piping and bolt stresses and so on.

Q. And you created water hammer in that manner?

A. We created a knocking of the pipe, let us say.

(Testimony of Jerome Pinkus.)

Q. Did you not create a sudden momentary increase in pressure in the pipe in that manner?

A. A surge, yes, we did.

Q. A "surge" is really the technical name for the phenomenon of water hammer, is it not?

A. That is what I call it.

Q. Now, you understood that the water main pressure in this installation here was something of the order of 120 to 140 pounds?

A. 125 pounds, I heard someone say.

Q. So in order to back steam clear up into the water main it would be necessary to have at least 125 pounds of pressure on the water heater?

A. You would have to have it at least that or more.

Q. The pressure on the water heater would have to be at least 120 pounds in order to back steam clear up into the water main? [442]

A. Steam or hot water, let us say. There has been no establishment of steam.

Q. Do you know the boiling point of water under 100 pounds of pressure? It is approximately 338 degrees, is it not?

A. If I had a steam table I could tell you but I know at 45 pounds per square inch it is around 290.

Q. And have you checked it for any pressure above that? A. Right now, no.

Q. Now, the effect of suddenly reducing the pressure on water that is under—that is heated above, say at 290 degrees, what is the effect of suddenly

(Testimony of Jerome Pinkus.)

reducing the pressure on water heated to 290 degrees?

A. Well, first of all, there is just—it will keep on building up pressure and temperature until there is some sort of an opening, let us say.

Q. Until the pressure is released, that was my question.

A. Until the pressure is released, that is right.

Q. When the pressure is released what happens?

A. You flash a certain percentage of it into steam, a small percentage.

Q. And what part of that goes into kinetic energy?

A. It is a change of state phenomenon. [443]

Q. But it goes into kinetic energy?

A. You change state from steam to water or water to steam. That is known as a change of state.

Q. And that will effect whatever happens to be around it; if it is water it affects water?

A. Yes, and energy is released.

Q. And will it, if it is in an enclosed system, it will create a surge in the water, will it not, a pressure wave?

A. It is possible to set up where you release the pressure—water will flow where you release the pressure.

Q. And if it is released suddenly a surge of energy will go into that water, will it not?

A. It is possible.

Mr. McCarthy: That is all.

Mr. Davis: Go ahead, explain.

The Witness: I have heard no mention of any

(Testimony of Jerome Pinkus.)

noise or anything accompanying it. Whenever you have a change of state, a flashing of the steam, you have a terrific amount of noise. You can hear it. It is audible.

Q. (By Mr. McCarthy): How far would you expect to be able to hear it in ordinary air?

A. Across this room and maybe more.

Q. And how far would you expect to hear it through four inches of concrete, an inch of crushed rock, a carpet [444] and with the noise of steam escaping?

A. I would hear it because it would come back to the boiler. If you set up these surges and everything your water heater would rock. You would hear it. And that is on the same level as the rest of the house. You see, sir, the water backs up into the water heater, which is a sort of a chamber. It is much bigger than the rest of the pipe in capacity and if a pressure came in there the heater would rock back and forth.

Q. By the way, the principal safety device on this type of water heater—that is, against the possibility of the thermostat failing to open, is the backing up of steam into the cold water line.

A. Let us not say “steam.” Let us say “hot water.”

Q. All right, hot water. That is the principal safety device, is it not?

A. Yes. It would back up into the cold water lines all the way out into the street.

Q. And it might, if the cold water line burst,



(Testimony of Jerome Pinkus.)

that would relieve the water pressure on the heater, would it not, relieve the pressure?

A. Relieve pressure, yes.

Q. And you wouldn't be able to get any water out of the hot water faucet, then?

A. Very little. It would depend. Now, you want to [445] remember that the type of break must be considered. It is like taking a hose and you have a little break down here near the end of the nozzle and water runs out and you get a release of pressure, but you still get water out of the nozzle, too.

Q. What I am getting at is the time.

A. The time—the period of water hammer, do you mean? Do you want me to develop that for you?

Q. No. That is almost instantaneous, is it not?

A. It varies with the length of the pipe and the velocity of the pressure wave. If you take the maximum of, let us say, 4700 feet per second, which is the speed of sound in the pipe, the period is actually twice the length of the pipe divided by the 4660. Now if you have 500 feet of pipe that is only about a quarter or a fifth of a second. It is mighty fast. [446]

\* \* \* \* \*

The Court: Just a moment. I would like to call back Mr. Pinkus. I would like to ask him a question for my own information.

Mr. Pinkus, in your experience with water heaters, if you find that you turn on your water taps and steam comes [449] out, would that indicate to you



(Testimony of Jerome Pinkus.)

that there was something wrong with the thermostat?

Mr. Pinkus: Not necessarily, your Honor.

The Court: What might it be?

Mr. Pinkus: It is possible—water even at 160 degrees or 180 degrees, which is now required for laundromats and so on, when you open up the tap it comes out full of so-called steam, but it is still water—water and a lot of steam.

The Court: But you have heard the description here, how it came out—that steam shot out?

Mr. Pinkus: Yes, I heard that.

The Court: That indicated the water was too hot, didn't it?

Mr. Pinkus: That it was beyond the boiling point, is right. [450]

\* \* \* \* \*

### ESLI H. DANIELS

heretofore sworn, resumed the stand and testified as follows: [454]

#### Direct Examination

Q. (By Mr. McCarthy): I don't believe you were questioned on the subject of whether you heard any noise at the time you opened the hot water faucet and steam escaped. Did you hear any noise at that time?

A. Well, I was in the bathroom and my son was in there with me. When I opened the tap there was a lot of noise accompanied by the steam.

Q. That is, you heard noise from the steam?

A. I heard noise from the steam—I mean the

(Testimony of Esli H. Daniels.)

rushing of the steam, and that was when I turned the tap on. We were both standing right there together.

Q. Did you hear any noise from the vicinity of the hot water heater?

A. Not that I remember.

Q. Do you recall whether you closed the door into that compartment after you shut off the gas?

A. No, I don't recall that.

Q. But there was noise from escaping steam?

A. There was a lot of noise, yes. [455]

\* \* \* \* \*

Q. Now, Dr. Daniels, you testified in your deposition that the only noise that you heard there, and I think you testified here previously, the only noise you heard was the hissing sound.

A. Just gurgling—a kind of gurgling sound.

Q. Escaping steam. You didn't hear any rattle or chatter?

A. No, I didn't hear any rattle or chatter.

Q. Either at the tank or at the hot water cock?

A. No. You see, when I turned on the hot water cock that was making so much noise, when that came out—it made a lost of noise. [465]

\* \* \* \* \*

### ROBERT L. DAUGHERTY

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Robert L. Daugherty.

(Testimony of Robert L. Daugherty.)

Direct Examination

Q. (By Mr. Davis): Mr. Daugherty, what is your profession?

A. I am the head of the mechanical and hydraulic engineering department of the California Institute of Technology. [483]

\* \* \* \* \*

Q. The heater was a Crane Champion heater with a tested pressure of 350 pounds and a rated pressure of, I think, 145 pounds.

Assuming all those things and assuming the break as I have described it to you, what in your opinion would such a break—in your opinion would such a break have occurred by internal pressure, by the water or heating system—hot water heating system? [488]

A. No, it could not have happened by internal pressure.

Q. Could it have happened by water hammer?

A. No, it could not.

Q. Could it happen by anything internally?

A. No.

Q. Now will you explain your answer?

A. Well, a pipe of this size and constructed as a  $\frac{3}{4}$ -inch pipe is with this thickness would require pressure in the neighborhood of 9,000 pounds per square inch to cause it to rupture. But actually that would be true only in case the pipe was of absolutely uniform construction all the way around, whereas as a matter of fact such a pipe is made by rolling together a sheet of steel and then welding the joint

(Testimony of Robert L. Daugherty.)

longitudinally along the pipe and that is somewhat weaker than the rest of the pipe. That being true, it would probably rupture at a pressure a little less than 9,000 pounds per square inch, but not a great deal less. And that rupture if it took place by internal pressure would be a longitudinal rupture—that is, along the axis of the pipe and almost invariably along this seam.

Any cylinder of any construction whatever has twice as much strength around a joint such as the place where this broke, against internal pressure, as it does along a longitudinal pressure, so that if it would take [489] 7,000 pounds per square inch to rupture this along its axis it would require at least 14,000 pounds per square inch internal pressure to cause a break at right angles to the axis of the pipe such as took place here and therefore I cannot believe that the break was caused by any internal pressure.

You asked the question about water hammer. The pressure caused by water hammer would have a maximum value of 6—in this particular pipe of 61  $\frac{3}{10}$  times whatever change of velocity took place almost instantaneously.

Now, if the velocity in the pipe was 10 feet per second, which is higher than it probably could ever be, and that were stopped instantly to zero, the water hammer pressure would be only 613 pounds per square inch which is about less than one-tenth the pressure necessary to rupture the pipe longitudinally and only  $\frac{1}{20}$ th of the pressure which



(Testimony of Robert L. Daugherty.)

would be necessary to rupture it at right angles, so I can't believe that this pipe could have been ruptured by any internal pressure caused by water hammer or any other cause.

Q. Now you had in mind that the hot water cocks were opened and kept open. Under those conditions, could, in that system as I have shown it to you, could a hot water—could a water hammer develop?

A. No. Water hammer could only develop when there [490] is initially a flow and so a pressure velocity of water through a pipe and that flow is suddenly stopped by closing a valve very quickly. That is the only way that water hammer can occur.

Q. Now can you or have you computed the bursting strength of a pipe of this character and this diameter and dimension?

A. That is the figure which I just gave you. It would be probably along this seam. A little bit less than 9,000 pounds per square inch. Possibly 7 or 8 thousand pounds per square inch would be the bursting pressure and that would be along the seam and not across a joint at right angles to that.

Mr. Davis: I think you may inquire.

The Court: I would like to ask this witness a few questions.

I am sitting here in the center of different experts on this question and maybe you can help me.

Here we have a case, which I presume has been explained to you, where the doctor, the owner of the premises, heard this hot water heater and he im-



(Testimony of Robert L. Daugherty.)

mediately turned off the gas and opened up the water cocks in the bathroom and in the kitchen and almost immediately the water stopped flowing and, as has been explained here, in due time they found where the break was. [491]

Isn't it a rather strange coincidence that those two should occur at the same time when there was undoubtedly pressure in that pipe?

The Witness: Yes, there seems to be a coincidence, but I am unable to see any relation between the two. I have thought that over.

The Court: And the fact that after they repaired the pipe and replaced the pipe and replaced the thermostat they haven't had any more trouble. They put on a safety valve on the heater and since then they have had no trouble.

The Witness: Of course, I don't know what caused the pipe to break in the first place. I could only hazard a guess on that. I imagine that the pipe must have broken because of some pull, some tension on it.

The Court: Wouldn't that same tension exist after it had been replaced?

The Witness: Not necessarily so because they put in a new pipe. The fact that after this break there was a gap in the pipe would indicate somehow or other there had been some shifting of the foundations or otherwise that would have put this pipe under tension and pulled that in two at that point and leave the gap.

That is only a guess on my part because I can't

(Testimony of Robert L. Daugherty.)

speak with any authority on that, not having been down there and investigated it personally as to what really took place. [492]

The Court: Assume that there had been a defective thread at that point, and there is no evidence that there was as far as that is concerned, in this case, but that is the one place that would give way, is that not true?

The Witness: It would still give way because there was some tension in the pipe. Now if you put in another piece of pipe that was a little bit stronger than the pipe already there it wouldn't be under that tension and it would be all right.

The Court: There has been testimony here to the effect that that is the weakest point in the pipe.

The Witness: It is the weakest point intension, yes, but not against internal pressure.

The Court: That is all.

### Cross Examination

Q. (By Mr. McCarthy): On that subject, Professor Daugherty, as I understand it you feel that the threaded part of the pipe is not the weakest against internal pressure. Did I understand you correctly?

A. Well, I would say it is the weakest part in tension and internal pressure, yes, but the break, if it would occur longitudinally and not at right angles to the pipe, which is my point, is twice as strong, at least, against a break that way as the other way. [493]

(Testimony of Robert L. Daugherty.)

The Court: Would that depend on whether the threads are completely imbedded in the T or not?

The Witness: No. Whatever the thickness might be there, it is the same—the stress is one way.

The Court: But the testimony was that reduces the strength of the pipe where the threads are.

The Witness: Yes.

The Court: For instance, if the threads were not completely imbedded in the T those threads would have a tendency to be the weakest point, would they not?

The Witness: Yes, but it would still rupture longitudinally.

The Court: It would depend on the depth of the threads, would it not?

The Witness: I don't think so. If this pipe were extremely thin, thinner than the part that remains in the thread, it would still rupture along the axis and not at right angles to the axis because there is no question about the mathematics of this case, that the stress in one direction is just twice the stress in the other for the same internal pressure so against internal pressure the split would always be lengthwise, as I understand it is in this exhibit that is down here before the court.

Q. (By Mr. McCarthy): Isn't it a fact, Professor Daugherty, that a sharp V opening in a piece of metal, where [494] you have a piece of metal with a sharp V opening in it such as a V cut thread that the bottom of this V is the weakest part of the metal.

A. That is true.

(Testimony of Robert L. Daugherty.)

Q. And that when a piece of metal has been heavily scored with a V fails, it fails at the bottom of the V? A. That is true.

Q. And in the case of a thread such as these, the bottom of the V is crossways of the pipe and around it? A. That is right.

Q. Now in arriving at your opinion, Professor Daugherty, you assumed that the pipe was of uniform strength. A. Yes.

Q. Without defects? A. That is right.

Q. And that the threads were cut strictly according to specifications?

A. Oh, yes, because I had no other information on which to base any calculation.

Q. I quite appreciate that. Now did you arrive at any conclusion, any opinion as to when this pipe broke?

A. No, I did not. I have no information that would enable me to tell that.

Q. Were you told that the steam pressure on the hot [495] water faucet at the time Dr. Daniels opened the faucet was of sufficient force to drive out the anti-splash device that was inside of the faucet?

A. No, I don't believe I was aware of that.

Q. You are familiar with the general construction of these faucets with a metal splash guard inside? A. Yes.

Q. Which is intended to prevent splashing of the water? A. That is right.

Q. Have you any opinion as to the amount of



(Testimony of Robert L. Daugherty.)

steam pressure that would be required to blow one of those devices out of the faucet?

A. No, I don't think I could make any guess on that because it would depend on how tightly it happened to be fitted in there. I don't think anybody could tell that.

Q. But it would require a substantial pressure, would it not? A. Yes.

Q. Now, you are also familiar with the construction of Crane hot water heaters such as this?

A. In a general way. I haven't studied the diagram at all. I haven't even seen it before this minute.

Q. This is intended to illustrate the manner of construction of the Crane hot water heater. The pipe close [496] to the figure 1 here is the cold water pipe—that is the cold water inlet to the tank and goes down to a point some inches above the bottom of the inside of the tank.

Now if any substantial amount of steam pressure had built up in this hot water tank, in this instance, and the cold water line had been broken at a point say 10 feet from the hot water heater, that steam pressure would have been relieved through the break in the line, would it not? A. Yes.

Q. And if there was a substantial amount of steam pressure on and since that pressure would have been relieved, you would not expect to find any steam pressure on the hot water side of the system either? A. No.

Q. So the fact that hot water or that a substan-



(Testimony of Robert L. Daugherty.)

tial steam pressure was experienced on the hot water side of the line indicates, does it not, that the cold water line was intact at the time Dr. Daniels opened the faucet?

A. That would seem to be so but, on the other hand, I must point out this fact, that the strength against internal pressure of any cylinder, whether it is a pipe or water tank, depends very much on its diameter and the pipe being very small in diameter has this very high strength even with threads cut down into it and so on, and with a high enough pressure to burst a pipe it should have burst the [497] pipe it should have burst the tank before it would the pipe. That is the point that I can't avoid making.

Q. Yes, but my question, Professor Daugherty, was this, if you did get steam pressure on the hot water faucet that is an indication that the cold water line was still intact.

A. It might be the case. I am not positive because I haven't gone into the detail of the construction of this heater and everything connected therewith. There may be something else in there that hasn't come to light that I know nothing about.

Q. But in the light of what you have learned and have been asked to assume, you would expect that the cold water line was then intact?

A. I am unable even to guess how this accident occurred, as I said before.

Q. Now, you were told that after Dr. Daniels opened the hot water faucet that water was not

(Testimony of Robert L. Daugherty.)

again obtainable from the hot water faucet until after repairs had been made a day or two later.

A. Yes.

Q. And your conclusion from that would be that the cold water line had been broken? A. Yes.

Q. So that the gist of it is that this line, this [498] cold water line must have broken at or shortly after Dr. Daniels opened the faucet?

A. I am not sure about that at all. It might have been broken before. There could have been something here which hasn't come to light yet.

Q. In the light of the facts as they have been told to you, that must then be the situation?

A. Well, I don't feel that I have gotten all of the facts. Maybe the facts aren't known by anybody.

Q. Well, that could be—

A. I have been trying since I heard about this to formulate some theory as to how this came about and I can't do it.

Q. Now, Professor Daugherty, water at atmospheric pressure, at sea level, boils at about 212 degrees Fahrenheit? A. That is correct.

Q. If that water is put under pressure in an enclosed system the boiling point is increased?

A. Correct.

Q. And if the pressure is suddenly released from water that is heated substantially above 212 degrees that water flashes into steam?

A. That is correct.

Q. And it flashes into steam in some instances with [499] considerable violence?

(Testimony of Robert L. Daugherty.)

A. That is, it may issue from some opening with considerable violence—considerable velocity, yes.

Q. That is, it actually acts as a matter of fact like the geyser at Yellowstone Park. They are comparable in nature. They are of the same type of phenomena, are they not?

A. Well, not exactly that.

Q. Do they not illustrate that principle?

A. Well, the water that comes out of those geysers is a little different. I don't quite see the analogy there but I will agree with you that when pressure is suddenly released on hot water it turns into steam and the steam will issue with a fairly high velocity and—

Q. And that velocity will be converted into kinetic energy?      A. That is kinetic energy.

Q. And if something gets in the way of it, it has to move?      A. Yes, that is right.

Q. And if that something happens to be water, the steam will attempt to impart velocity to that water?      A. Well, all right.

Q. Isn't that just good high school physics?

A. Yes, that is all right, but I still don't see how [500] the application in this particular case results.

Q. Well, now, coming to that—a sudden change in the velocity of water in an enclosed system, it will produce a surge or pressure wave, is that correct?

A. Yes. That is the water hammer that I spoke of, but you have got to have an initial velocity which has been stopped. [501]

## ROY L. ELMORE

called as a witness by and on behalf of the defendant, having been heretofore duly sworn, was examined and testified further as follows:

## Direct Examination

Q. (By Mr. Davis): Mr. Elmore, getting to this question of the time of your—that the Hartford Fire Insurance Company was first advised of this matter, you weren't here but Mr. Avery— it was Mr. Avery, wasn't it?

Mr. McCarthy: Yes—no. Yes, the man who signed the policy.

Q. (By Mr. Davis): A member of the firm who signed the policy. It doesn't make any difference and I don't think it is necessary to make a speech to the court. This is not a jury trial.

Mr. Elmore, Mr. Avery mentioned three persons who he spoke to about this, Russel Thomas, Frank Homer, and John Kilgore. Are any of those people—were any of those people employees of the Hartford Fire Insurance Company? [504]

A. Only Mr. John Kilgore.

\* \* \* \* \*

## JOHN KILGORE

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: John Kilgore.

(Testimony of John Kilgore.)

Direct Examination

Q. (By Mr. Davis): What is your occupation, Mr. Kilgore?

A. I am special agent for the Hartford Fire Insurance Company.

Q. When was the first time you ever heard about this incident of the damage to Dr. Daniels' property?

A. Well, Mr. Elmore called me into his office and [505] discussed the matter with me in his office there. That is my first recollection.

Q. When was that?

A. Well, it was in April 1950.

Q. This last April?

After that, later on, did you talk with Mr. Avery about it?

A. Yes, I have talked with him from that time since, to the present time.

Mr. Davis: That is all.

Cross Examination

Q. (By Mr. McCarthy): Haven't you talked to Mr. Avery on many occasions on many subjects?

A. That is true.

Q. And did you see Mr. Avery—you did see Mr. Avery in the month of December 1949, didn't you?

A. Yes, I did. [506]

\* \* \* \* \*

[Endorsed]: Filed Sept. 10, 1951.



[Endorsed]: No. 13,090. United States Court of Appeals for the Ninth Circuit. Hartford Fire Insurance Company, a corporation, Appellant, vs. Esli H. Daniels and Helen J. Daniels, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: September 11, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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United States Court of Appeals for the  
Ninth Circuit

No. 13090

ESLI H. DANIELS, et al.,

Appellees,

vs.

HARTFORD FIRE INSURANCE COMPANY, a  
corporation,

Appellant.

### APPELLANT'S STATEMENT OF POINTS

Appellant states the following points upon which it will rely on this appeal:

1. That the occurrence which resulted in the damage to Appellees' property did not constitute a peril such as was insured under the terms of Appellant's policy, to wit, an explosion.

2. That Appellees failed to perform and comply with the conditions precedent in the policy or contract of insurance in that they did not, within the time provided for therein, notify Appellant of claim or file verified Proofs of Loss as required, and said requirements of said contract were not waived by Appellant, nor was Appellant estopped to rely thereon.

Respectfully submitted,

HINDMAN & DAVIS,  
/s/ By E. EUGENE DAVIS,  
Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Sep. 21, 1951. Paul P. O'Brien,  
Clerk.

